

[Insert Logo of United States Bankruptcy Court]

LOCAL BANKRUPTCY RULES
FOR THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

Honorable Ralph B. Kirscher
Chief United States Bankruptcy Judge

Honorable John L. Peterson
United States Bankruptcy Judge (Recall Status)

Effective _____, 2008

**LOCAL BANKRUPTCY RULES
FOR THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

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EFFECTIVE DATE	<u>93</u>
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LOCAL RULES COMMITTEE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

In re

2008 AMENDMENTS TO THE LOCAL RULES FOR THE
UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA.

O R D E R

IT IS ORDERED the proposed amendments to the Local Rules for the United States Bankruptcy Court for the District of Montana to be effective _____, 2008, are hereby approved as of said effective date.

DATED: _____, 2008.

HON. RICHARD F. CEBULL
Chief United States District Judge

HON. DONALD W. MOLLOY
United States District Judge

HON. SAM E. HADDON
United States District Judge

**LOCAL BANKRUPTCY RULES
FOR THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

PREFACE

From and after the effective date specified in the preceding Order of the United States District Court, these Local Bankruptcy Rules shall govern practice and procedure in the United States District Court for the District of Montana. United States District Court Standing Order No. 12 (Revised) makes a general reference of all bankruptcy cases and proceedings to the Bankruptcy Judges of the District of Montana, provides for jury trials in the Bankruptcy Court, and authorizes appeals to be heard and decided by the Ninth Circuit Bankruptcy Appellate Panel. Such Standing Order is reproduced below in its entirety:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

STANDING ORDER NO. 12 (REVISED)

**CONTINUING ORDER REFERRING BANKRUPTCY CASES AND
PROCEEDINGS TO BANKRUPTCY JUDGES, AUTHORIZING JURY
TRIALS, AND AUTHORIZING BANKRUPTCY APPEALS
TO BE DECIDED BY THE NINTH CIRCUIT
BANKRUPTCY APPELLATE PANEL SERVICE**

IT IS ORDERED that Standing Order No. 12 (revised), filed on May 24, 1985, is revised and amended as follows:

PART I: REFERRAL OF BANKRUPTCY CASES AND PROCEEDINGS

1.01 CASES AND PROCEEDINGS UNDER TITLE 11, UNITED STATES CODE

This Court hereby refers to the bankruptcy judges of this district all cases under Title 11, and all proceedings arising under Title 11 or arising in or related to cases under Title 11.

1.02 CASES AND PROCEEDINGS UNDER THE BANKRUPTCY ACT OF 1898

The bankruptcy judges of this district shall hear and determine cases and proceedings arising under the Bankruptcy Act of 1898, as amended, pursuant to § 403(a) of the Bankruptcy Reform Act of 1978.

1.03 JURY TRIALS

If the right to a jury trial applies in a proceeding that may be heard under 28 U.S.C. § 157 by a Bankruptcy Judge, the Bankruptcy Judge(s) of this district may conduct the jury trial with the express consent of all the parties.

PART II: BANKRUPTCY APPEALS

2.01 BANKRUPTCY APPELLATE PANEL

(a) Pursuant to 28 U.S.C. § 158(b)(2), this Court hereby authorizes the Bankruptcy Appellate Panel Service to hear and determine appeals from judgments, orders, and decrees entered by bankruptcy judges from this district, in accordance with the "Order Continuing Bankruptcy Appellate Panels of the Ninth Circuit" dated April 28, 1995, attached hereto.

2.02 RULES GOVERNING BANKRUPTCY APPEALS

(a) Practice in such bankruptcy appeals as may come before this District Court shall be governed by Part VIII of the Federal Rules of Bankruptcy Procedure, except as provided in this Order or in rules subsequently adopted by this District Court.

(b) Notwithstanding subparagraph (a), the time for filing appellant's, appellee's, and reply briefs for consideration by the District Court shall be 40 days, 30 days, and 14 days, respectively, in lieu of the time limits specified in Rule 8009(a) of the Federal Rules of Bankruptcy Procedure, provided however, that the District Court may shorten these time limits in appropriate cases.

(c) All briefs filed on appeal in District Court shall not exceed twenty (20) pages in length, exclusive of exhibits, table of contents, and covers, without prior Court approval. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

PART III: EFFECTIVE DATE

This Order shall become effective immediately and supersedes all previous orders of this Court regarding bankruptcy cases, proceedings, and appeals, provided however, that all prior actions of the Bankruptcy Appellate Panel Service not inconsistent herewith are not affected by this Order.

IT IS SO ORDERED.

DATED: September 26, 1995.

Chief Judge Paul G. Hatfield
U.S. District Judge Charles C. Lovell
U.S. District Judge Jack D. Shanstrom

**LOCAL BANKRUPTCY RULES
FOR THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

PART I.

RULE 1001-1. Scope, Applicability and Promulgation of Local Rules; Short Title.

(a) **Scope.** The Local Bankruptcy Rules govern practice and procedure in the United States Bankruptcy Court for the District of Montana. A Judge, *sua sponte*, or on the motion of any party, may for cause shown dispense with any of these Local Rules in a particular case or proceeding as may be necessary to meet emergencies or to avoid injustice. The Local Rules shall be cited as “Mont. LBR _____”. The term “Judge” as used in these Local Rules includes a United States Bankruptcy Judge, a United States District Judge, or any other judicial officer to which a bankruptcy case or proceeding has been referred. The term “Clerk” as used in these Local Rules refers to the United States Bankruptcy Clerk for the District of Montana. Local Bankruptcy Forms as contained in the Appendix to these Local Rules shall be cited as “Mont. LBF _____”.

(b) **Applicability.** Unless otherwise indicated, each of these Local Rules applies to cases commenced under Chapters 7, 9, 11, 12, 13 and 15 of the U. S. Bankruptcy Code and to all Adversary Proceedings.

(c) **Promulgation.** Promulgation of these Local Rules are made by the Bankruptcy Judge in accord with Rule 9029 of the Federal Rules of Bankruptcy Procedure, and Rule 83 of the Federal Rules of Civil Procedure.

(d) **Numbering.** Each Local Rule is numbered by reference to the corresponding Federal Rule of Bankruptcy Procedure (F.R.B.P.). Except as otherwise provided, the authority for each Local Rule is the corresponding F.R.B.P.

(e) **Electronic Filing.** The Court implemented the Case Management/Electronic Case Filing System (CM/ECF) in August of 2002. **FILING THROUGH CM/ECF IS MANDATORY FOR ALL USERS IN ALL BANKRUPTCY CASES AND IN ALL ADVERSARY PROCEEDINGS, EXCEPT PRO PER ENTITIES (INCLUDING PRO PER CREDITORS WITHOUT COUNSEL).** Any entity seeking to receive training and a password to access CM/ECF, may contact the Clerk of Court.

Related Authority:

28 U.S.C. §§ 151, 2071, 2072 and 2075
Federal Rules of Bankruptcy Procedure 1001, 5005, 9009 and 9029
Federal Rule of Civil Procedure 83

RULE 1002-1. Petition - General.

- (a) **Petitions.** All petitions shall conform to Official Form 1.
- (b) **Filing.** A petition commencing a case under the U. S. Bankruptcy Code shall be filed by electronic means through CM/ECF, unless the filer is proper, and then by filing with the Clerk's Office.
- (c) **No Blank Items.** Each item in the petition not otherwise filled out shall be completed by the entry of "none" or "not applicable," as appropriate.
-

Related Authority:

Federal Rules of Bankruptcy Procedure 1002 and 5005
Bankruptcy Official Form 1

RULE 1005-1. Petition - Caption.

- (a) **Debtor's Current Name.** The title of the case shall include the debtor's full and correct name.

(1) **Corporations, Limited Liability Companies, and Partnerships.** If the debtor is a corporation, a limited liability company, or a partnership, the title of the case shall so specify as follows:

ABC, Inc., a Corporation; or XYZ, a General (or Limited) Partnership; or Blackacre, LLC.

(2) **Joint Petitions.** Pursuant to 11 U.S.C. § 302, only a husband and wife are permitted to file a joint petition. The title of the case shall identify them as follows:

John Robert Doe, Jr., and Jane Roberta Doe.

(b) **Other Names Used by the Debtor.** Any other names used by the debtor in the eight (8) years preceding the commencement of the case shall be included in the petition, including assumed business names or dba's and the last four digits of the social-security or individual debtor's taxpayer identification number, and any other federal taxpayer identification number.

(c) **Debtor's Current Address.** Debtor shall include a physical street address, if available, on the petition, in addition to any mailing address (if the latter is different than the debtor's street address).

Related Authority:

Federal Rules of Bankruptcy Procedure 1005 and 9004

RULE 1006-1. Fees; Installment Payments.

(a) **General Requirement.** Every petition shall be accompanied by the filing fee required by statute or by the Judicial Conference of the United States, unless waived by order of the Court pursuant to 28 U.S.C. § 1930(f) and submitted on the prescribed Official Form 3B.

(b) **Installment Payments.**

(1) **Application.** Any individual debtor desiring to pay the filing fee in installments shall use Official Form 3A .

(2) **Schedule of Payments.** The first installment shall accompany the petition, shall not be less than \$50.00 and shall include any required administrative fee. The number of installments proposed in the application shall not exceed four (4), and the final installment shall be payable within 120 days after the date the petition is filed.

(3) **Failure to Pay Installment.**

(A) **Notice of Nonpayment.** If an individual debtor fails to pay an installment as approved in the application, the Clerk shall provide written notice to the debtor, debtor's attorney, if any, and the trustee that such installment must be paid within ten (10) days of the notice.

(B) **Dismissal of Case.** If an individual debtor fails to pay an installment after notice and within the required time period, the Court shall issue an order of dismissal without any further notice or hearing. If the individual debtor

timely pays the first delinquent installment within the ten (10) day period and then fails to pay any subsequent installment by the required date, the Court shall issue an order of dismissal, without any additional notice from the Clerk.

(C) **Notice of Possible Dismissal.** At the time the Clerk transmits a copy of the Order approving the application to pay in installments, the Clerk shall include with such transmission a notice of the dismissal provisions contained in this Local Rule.

Related Authority:

Federal Rules of Bankruptcy Procedure 1006
Bankruptcy Official Form 3A

RULE 1007-1. Schedules, Statement of Financial Affairs, Statement of Social Security Number, and Other Official Forms.

(a) **No Blank Items.** Each item in the schedules, statement of affairs and other Official Forms not otherwise filled out, shall be completed by the entry of “none” or “not applicable,” as appropriate. Every blank in every form must be completed, and all of the information required by the Official Forms must be provided.

(b) **Summary of Assets and Liabilities.** In all Chapter 7, 11, 12 and 13 cases, the debtor shall file a document listing a summary of all assets and liabilities, itemizing all priority, secured, and unsecured claims, and itemizing all real and personal property, and any exemptions claimed; together with total amounts for all assets, all liabilities, and all exemptions claimed. Such summary must be amended in the event of any amendments to the debtor's schedules or statements.

(c) **Number of Copies.** No copies of the petition, schedule of assets and liabilities, statement of financial affairs, and statement of intentions shall be filed with the Clerk by an individual or entity seeking relief under Chapters 7, 9, 11, 12 or 13.

(d) **Corporate or Limited Liability Company Petition.** A petition filed by a corporation or a limited liability company under Chapters 7, 11 or 12 shall include a resolution adopted by the directors or members or managers and, if required by the corporate by-laws or the laws of the state of incorporation, a resolution adopted by shareholders authorizing the relief sought (or a certification by the person signing the petition or the debtor's attorney that a shareholder's resolution is not required).

(e) **Dismissal of Case.** If the schedules, statement of financial affairs and other required forms are not filed with the petition, they shall be filed within fifteen (15) days of the filing of the petition or within the time permitted by Court Order granting a motion for extension of time filed prior to the expiration of the fifteen (15) day period. If the schedules, statement of financial affairs, statement of intentions and other required forms are not timely filed, the Court shall dismiss the case, without notice or hearing to debtors or their counsel. Upon dismissal of a case under this provision, debtors, debtors' counsel, the trustee or any other party in interest shall have ten (10) days to request reconsideration of the order of dismissal. The request for reconsideration must contain a showing of good cause for the request, and a request for reconsideration filed by debtors or their counsel must be accompanied by the schedules, statement of financial affairs, and statement of intentions. If a case is dismissed under this provision and if no request for reconsideration is timely filed, the debtors shall be prohibited from filing another bankruptcy petition in the District for 180 days, except by leave of court granted for good cause.

(f) **Retention of Signed Copies.** Signatures on documents that are electronically filed and that require original signatures other than from the authorized CM/ECF user, must be maintained in one of the two following manners:

(1) **Original Signatures.** The original signed documents must be retained in paper form by the filer for a period of five (5) years after the case is closed; and, on the request of the Court, the U.S. Trustee, or the case trustee, the filer must provide original documents for review; or

(2) **Scanned Signatures.** The pages of the document bearing the signatures must be scanned into CM/ECF after the electronic version of the document bearing the parties' electronic signatures.

(g) **Supplemental Personal Property List.** All debtors shall prepare and file a Supplemental Personal Property List, in compliance with Mont. LBF 31; or their Schedule B list of personal property must contain substantially the same information, itemizing each item of personal property, with a separate value attributable to each item. All items of personal property must be listed and valued. For items worth more than \$50, each individual item shall be listed separately (or collections of items, such as baseball cards, stamps, coins, or compact discs) and a value must be assigned to each item (or collection). For items worth less than \$50, the existence of such items must be disclosed, describing the same in general terms or categories (e.g., clothing; or miscellaneous pictures), with an affirmative statement that they are individually or as a group worth less than \$50. All property values shall be portrayed as fair market values.

(h) **Tax Returns and Refunds.**

(1) **Restrictions Regarding Debtor's Tax Information.** Tax information filed with

the court and that which is provided to creditors and trustees is subject to the Administrative Office's guidance regarding tax information as from time to time promulgated. Any person receiving copies of the debtor's tax information shall treat the information as confidential and shall not disseminate it except as appropriate under the circumstances of the case.

(2) **Filing Tax Returns.** Except where the court orders otherwise for good cause shown, a debtor must file all required tax returns with the proper taxing authority; and provide the trustee a copy of any tax return for the tax years subject to the Court's tax turnover order contained in Mont. LBF 35, in accordance with 11 U.S.C. §§ 521, 1116, 1308, and 1325. Failure to do so may be grounds for dismissal.

(3) **Tax Refunds.** Immediately upon receipt, all applicable income tax refunds shall be turned over to the trustee, in accordance with the Court's tax turnover order contained in Mont. LBF 35.

Related Authority

U.S. Bankruptcy Code §§ 102, 109(g), 521, 1116, 1308, 1325
Federal Rules of Bankruptcy Procedure 1007, 1017, 4002 and 4004

Committee Note:

The Official Bankruptcy Forms for Schedules D and F require the creditor's name, address and account number, and require the date the claim was incurred and the consideration for the claim, as well as the amount of the claim and other information. Be sure to provide an approximate date (or a range of dates) for when each debt was incurred, and indicate the underlying basis for the claim (e.g., medical bills incurred from 5/99 through 6/03). The filing of incomplete schedules or statements of financial affairs may result in denial of discharge or the disgorgement of fees.

As the Administrative Office's Guidance may change, please refer to the court's website at www.mtb.uscourts.gov for the most recent version. (Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521)

RULE 1007-2. Master Mailing List.

(a) Filing Requirements.

(1) **Voluntary Case.** A "master mailing list" shall be filed with the petition

including the name and mailing address of every creditor, each general and limited partner for a partnership debtor, the most recent officers and directors for a corporate debtor, all equity security holders, and the members or managers of a limited liability company.

(2) **Involuntary Case.** With every involuntary petition there shall be filed a master mailing list including the name and address of each petitioner, the petitioner's attorney, the debtor, any debtor's attorney, all last known general partners if the debtor is a partnership, all last known officers if the debtor is a corporation, and the last known members and managers if the debtor is a limited liability company.

(3) **Duty to Supplement.** A supplemental mailing list setting forth newly added creditors or additional parties in interest and all previously listed creditors or parties in interest shall be filed with any schedules or amended schedules, which will replace any previously filed mailing list. Debtor's failure to file a replacement mailing list with all creditors and parties in interest including any added persons, and to certify that a Notice of Commencement of Case, if previously entered by the Clerk, has been mailed to all added parties, after notice from the Court, shall be grounds for the Court to dismiss debtor's petition without further notice or hearing.

(b) **Chapter 9 and 11 Cases.** The debtor shall file a mailing list with the list of the debtor's twenty (20) largest unsecured creditors as required by F.R.B.P. 1007(d), clearly marked "20 Largest Unsecured Creditors," which shall include the names, addresses and claims of the creditors that hold the largest unsecured claims, excluding insiders, as prescribed by the appropriate Official Form, together with a contact person for each creditor on such list.

(c) **Accuracy and Completeness.** The debtor is responsible for the accuracy and completeness of the master mailing list. When serving notices, the Clerk and any party in interest may rely exclusively on the master mailing list. It shall be the debtor's responsibility to amend the matrix whenever it appears that a creditor or other party in interest was omitted.

(d) **Printing Requirements.** The names and addresses of creditors and other parties listed in the master mailing list must be typed. Each individual name and address must consist of no more than four (4) lines; and a single space must be inserted between the name and address of each successive party. The printing of the names and addresses must be of letter quality using a typewriter, laser printer, or daisy wheel printer. Dot Matrix printers shall not be allowed as the document cannot be optically scanned. In lieu of a typewritten form, master mailing lists shall be provided to the Clerk's Office on a computer disk in "Ascii" text format if more than 100 creditors are listed.

(e) **Dismissal of Case.** If the master mailing list required by Mont. LBR 1007-2(a) and the Mailing List of the Twenty (20) Largest Unsecured Creditors, if required by F.R.B.P. 1007(d), and other required documents are not filed with the petition, they shall be filed within forty-eight (48) hours after filing the petition. If the master mailing list, the Mailing List of the Twenty (20) Largest Unsecured Creditors, schedules or statement of financial affairs and other required documents are not timely filed, the Court shall dismiss the case, with notification in the Order that the debtor may request a hearing to reconsider such dismissal within five (5) days of the date of the Order through a proper motion provided the missing mailing lists, schedules, statement of financial affairs or other statements are included with the motion.

Related Authority:

U. S. Bankruptcy Code § 102
Federal Rule of Bankruptcy Procedure 1007, 1017 and 9004

RULE 1009-1. Amendments to Petition, Schedules, Master Mailing List and Statement.

(a) **Amendments Generally.** Under F.R.B.P. 1009, debtors may amend the petition, list, schedule, or statement at any time before the case is closed. Debtors shall file a notice of amendment together with the amended petition, list, schedule, or statement. *See* Mont. LBF 4. A motion to amend by debtors and an order granting such amendment is unnecessary. Debtors filing the amendment shall contemporaneously serve the amendment on all entities affected by the amendment. If a party in interest moves to amend a petition, list, schedule or statement, then a motion is required filed in compliance with Mont. LBR 9013-1.

(b) **Interlineation.** No amendment by interlineation shall be permitted. The entire page or pages that the amendment affects shall be redrafted and filed.

(c) **Denomination of Amendment.** Any amended document shall clearly state that it is an amendment to the original.

(d) **Notification.** If the debtor files a notice of amendment adding creditors or parties in interest not previously included in the schedules or included on the mailing list, or if the amendment corrects an address or listed debt, the person filing the amendment shall serve copies of the following on any affected creditor or party in interest and file a certificate of service verifying that such copies have been served:

- (1) the amended list or schedule;
- (2) the “Notice of Chapter [7, 11, 12 or 13] Bankruptcy Case, Meeting of Creditors, and Deadlines”;
- (3) the order granting discharge, if any;
- (4) any other filed document affecting the rights of said creditor or party in interest; and
- (5) any notice or order setting or extending any deadline for filing a claim, or a complaint objecting to the debtor’s discharge or to the dischargeability of a debt.

(e) **Fee for Amending Schedules.** Every amendment that adds creditors, equity security holders or parties in interest to lists, schedules or statements previously filed with the Court, or that corrects the names, addresses or debts of such entities, shall be accompanied by a fee as prescribed by the Judicial Conference of the United States.

Related Authority:

Federal Rule of Bankruptcy Procedure 1009

RULE 1009-2. Case Name and Number on Amendments; Verification.

The debtor's full name and case number shall appear on the first page of any amended petition, schedules, and/or statements. Any such amendment shall be verified in the same manner as the original.

Related Authority:

Federal Rule of Bankruptcy Procedure 1007, 1008 and 1009

RULE 1009-3. Amendment of Petition to Add Party.

Unless otherwise ordered by the Court, a petition may not be amended to add a spouse as a joint petitioner after the order for relief has been entered.

Committee Note:

Addition of a party after entry of the order for relief is a substantial change and should generally not be allowed. The appropriate remedy is to file a second petition and file a motion to allow joint administration or consolidation.

RULE 1015-1. Joint Administration and Consolidation.

(a) **Joint Administration.** A motion seeking the joint administration of the cases of two or more related debtors shall be made pursuant to F.R.B.P. 1015(b).

(b) **Consolidation.** A motion seeking to consolidate two or more cases shall, if granted, result in the substantive consolidation of such cases for all purposes unless otherwise ordered by the Court. The debtors' estates shall be deemed consolidated in a case jointly filed by a husband and wife, unless the Court orders otherwise.

Related Authority:

11 U.S.C. § 302
Federal Rules of Bankruptcy Procedure 1015 and 2009

Committee Note:

While joint administration is contemplated and provided for in the F.R.B.P., the substantive consolidation of the estates of separate debtors is not. Consolidation of non-related parties is not mentioned in the Bankruptcy Code or Rules. As noted in the Advisory Committee Notes under F.R.B.P. 1015, consolidation, as distinguished from joint administration, “is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of separate estates.” Consolidation is a judicially created doctrine, which must be expressly sought and the grounds therefore proven. A trustee or debtor in possession must keep separate accounts of the property and distribution of each estate being jointly administered, as required by F.R.B.P. 2009(e).

RULE 1017-1. Dismissal or Conversion.

(a) Motions and Notices to Dismiss or Convert Filed by Debtor.

(1) Motion by Debtor for Conversion from Chapters 7 or 11. A debtor seeking conversion under 11 U.S.C. § 706(a), if the case has not been previously converted from another chapter, shall file a motion for conversion to the desired chapter, with the notice required under Mont. LBR 9013-1.

A debtor seeking conversion under 11 U.S.C. § 1112(a) or (d) shall file a motion for conversion to the desired chapter, without the notice required under Mont. LBR 9013-1. Such motion will be granted without hearing.

(2) Motion by Debtor for Dismissal from Chapter 7, with Notice. A debtor seeking dismissal under 11 U.S.C. § 707(a) shall file a motion for dismissal setting forth alleged facts showing no plain legal prejudice to creditors, with the notice required under Mont. LBR 9013-1.

(3) Motion by Debtor for Dismissal from Chapters 12 or 13, without Notice. A debtor seeking dismissal under 11 U.S.C. §§ 1208(b) or 1307(b), if the case has not been previously converted from another chapter, shall file a motion for dismissal, without the notice required under Mont. LBR 9013-1. Such motion will be granted without hearing.

(4) Notice of Conversion from Chapter 12 or 13 to Chapter 7. A debtor seeking a conversion under 11 U.S.C. §§ 1208(a) or 1307(a) to a case under Chapter 7 shall file a notice of conversion, in compliance with Mont. LBF 10. No motion and court order is required. The filing date of the notice becomes the date of conversion.

(b) Motions to Dismiss or Convert Filed by Trustee or Other Party in Interest.

Except as provided in Mont. LBR 1017-1(c), a trustee or other party in interest may file a motion to dismiss or to convert a case to a case under another chapter in accordance with F.R.B.P. 1017, by using Mont. LBF 27, with service of the motion on the debtor, debtor's attorney and the trustee. The motion shall include a legal and factual basis for the motion, and the notice required under Mont. LBR 9013-1.

(c) Dismissal or Conversion upon Debtor Defaulting under Terms of Confirmed Plan. When the debtor defaults under the terms of a confirmed plan and the order confirming the plan contains the following provision: "In the event of any default under the plan, the court may dismiss or convert this case to Chapter 7 without further notice or hearing", the Court may grant a motion for conversion or dismissal without the notice period required in Mont. LBR 1017-1(a) and without further hearing.

(d) Dismissal of Related Title 11 Proceedings and Matters. Whenever a case filed

under Title 11 is dismissed, any related adversary proceeding, contested matter, or any other pending matter shall likewise be dismissed without prejudice and without further order of the Court, unless the Court orders otherwise. Cases with pending appeals may be dismissed, but the dismissal of the case shall not be deemed to deprive any appellate court of its jurisdiction. Dismissal shall not be deemed to deprive the Bankruptcy Court of the authority to rule on the reasonableness of the professional fees and costs charged by debtor's attorney, as provided for in Mont. LBR 2016-1(d).

(e) Trustee's Professional's Fees. When a Chapter 7 case is converted to another chapter, the Chapter 7 trustee shall file any application for professional fees or costs within thirty (30) days following the conversion. Failure to make such application within the time allowed may subject the fee application to denial.

Related Authority:

11 U.S.C. §§ 348, 349, 706, 707, 930, 1112, 1208, and 1307
Federal Rules of Bankruptcy Procedure 1017 and 1019

Committee Note

A motion to dismiss or convert shall be served as required by F.R.B.P. 2002. Unless the moving party expressly consents to a continuance for a specific period of time or compelling circumstances prevent the Court from meeting the time limits established by § 1112(b)(3), the Court must commence the hearing on a motion to dismiss or convert under § 1112(b) not later than 30 days after the filing of the motion, and must decide the motion not later than 15 days after the commencement of the hearing.

RULE 1019-1. Conversion from One Chapter to Another.

(a) Debtor's Schedules Following Conversion. Within fifteen (15) days following conversion to another chapter the debtor shall file revised schedules of assets and liabilities, as well as revised statements of income and expenses, reflecting any changes in such items since the filing of the original petition.

(b) Notification. If the debtor files an amendment adding creditors or parties in interest not previously included in the schedules or included on the mailing list, or if the amendment corrects an address or listed debt, the person filing the amendment shall serve copies of the required documents in compliance with Mont. LBR 1009-4(b).

RULE 1074-1. Representation of Corporations, Partnerships and Limited Liability Companies.

Other than at meetings of creditors held pursuant to 11 U.S.C. § 341(a), corporations, including corporate creditors, partnerships, and limited liability companies shall be represented in Court proceedings by an attorney. Such entities are not required to retain attorneys to file proofs of claim, reaffirmation agreements or stipulations to modify stay.

Related Authority:

28 U.S.C. § 1654

PART II.

RULE 2002-1. Notice to Creditors and Other Parties in Interest.

(a) **Duty to Provide Notice.** Unless otherwise directed in these rules, or by the Court, notices shall be provided as set forth in Mont. LBR 9013-1.

(b) **Chapter 12 and 13 Plans.** Confirmation hearings with regard to Chapter 13 Plans shall be scheduled by the Clerk and notice of the time and place for such hearings shall be provided in the Notice of Chapter 13 Bankruptcy Case and Meeting of Creditors. The Clerk shall give notice of the time fixed for objecting to a proposed plan and any amendment or modification to the plan. The debtor or debtor's counsel shall be responsible to serve copies of Chapter 12 or 13 Plans or Amended Plans on all creditors and other parties in interest, and to file a verified certification of service listing the names and addresses of all parties who were served.

(c) **Method of Service.** Notices and documents required to be sent by a party, other than the Clerk, shall be served through CM/ECF to authorized users, and by mailing (as defined in F.R.B.P. 9001(8)) to any person not authorized to use CM/ECF, unless such person has consented by notification to the Clerk that such person requests notification by a specified type of electronic transmission pursuant to F.R.B.P. 9036.

(d) **Certification of Service.** Any certificate of service must be verified and must fulfill the requirements set forth in Mont. LBR 9013-1(d)(2). The certificate of service does not need to include any person who is notified through CM/ECF, as such person is identified on the notice of electronic filing generated through CM/ECF.

RULE 2002-2. Requests for Special Notice.

Any creditor or other party in interest may request special notice and the addition of its name to the master mailing list in a bankruptcy case by using Mont. LBF 23, or any similar request form.

Related Authority:

Federal Rules of Bankruptcy Procedure 2002(a) and (g), 3015(d), 9001(8) and 9010

Committee Note:

Persons to be served with a Request for Special Notice include the debtor, all creditors, the trustee, and the Office of the U.S. Trustee.

RULE 2002-3. Notice to United States and Montana State Agencies.

In addition to notices required by F.R.B.P. 2002(j) and to agencies of the United States and the State of Montana listed in the schedules of creditors or mailing matrix, copies of notices shall be served, as appropriate, to the following:

(a) In all cases:

The Office of the United States Trustee and the Montana Department of Revenue at their addresses maintained on the Court's website.

(b) In all Chapter 11 cases:

Internal Revenue Service at its address maintained on the Court's website.

(c) In all Chapter 11 cases, and in all cases under other chapters in which the debtor is aware of any claims by Montana state agencies other than the Montana Department of Revenue:

To the agency and address maintained on the Court's website.

(d) Notice of all hearings on original or modified disclosure statements or on confirmation of original or modified plans in Chapter 11 cases where the debtor is

a publicly held corporation:

Securities and Exchange Commission at its address maintained on the Court's website.

(e) If the debtor is a commodity broker:

Commodity Futures Trading Commission at its address maintained on the Court's website.

(f) If the United States has a stock interest:

Secretary of Treasury at its address maintained on the Court's website.

(g) If a person seeks the name and address of a governmental entity that is not on the Court's website, the person may inquire with the Clerk of Court to determine if the Court has a name and address available that has not been placed on the Court's website.

RULE 2002-4. Notice of Application for Professional Fees and Costs.

If an application for professional fees or reimbursement of expenses exceeds \$1,000.00, except as otherwise provided in Mont. LBR 2016-1, the professional shall file with the Court and serve a notice consistent with Mont. LBR 9013-1 and Mont. LBF 18 on the debtor, all creditors, any committee, and any parties in interest requesting special notice disclosing that the professional has filed such an application with the Court. The notice shall state the specific amount of the fees and expenses being requested from the estate, subject to Court approval, and shall comply with Mont. LBR 9013-1.

Related Authority:

Federal Rules of Bankruptcy Procedure 2002(a)(6)
Mont. LBR 2016-1, 9013-1

RULE 2003-1. Scheduling of Creditors' Meetings; Bankruptcy Information Sheet; and Debtor Declaration Sheet.

The U. S. Trustee shall schedule creditor meetings pursuant to Rule 2003, F.R.B.P. Prior to each individual debtor's § 341 meeting, he or she will be provided and give the opportunity to

read the “Bankruptcy Information Sheet” prepared by the Office of the United States Trustee, which is set forth in LBF 32. Debtors will be asked by trustees at their §341 meetings whether they have received and reviewed this information sheet. Debtors’ counsel shall provide copies of the Bankruptcy Information Sheet (Mont. LBF 32) to their clients prior to their § 341 meetings in order to allow debtors sufficient time to read the same. Debtors will also be required to read and sign a Declaration of Debtor(s) Under Penalty of Perjury at their § 341 meetings, verifying the truthfulness and accuracy of their petitions, schedules and statements of financial affairs.

Related Authority:

11 U.S.C. §§ 341 and 343
Federal Rule of Bankruptcy Procedure 2003

RULE 2003-2. Time Limitations of Creditors' Meetings.

The U.S. Trustee, or case trustee, at a meeting of creditors held pursuant to 11 U.S.C. § 341(a), shall have full authority to allocate available time to each meeting scheduled during each time period, place limitations on the time allowed creditors to examine a debtor in order to conclude or adjourn all meetings within the time period scheduled, and to call the docket in such order as appears necessary to facilitate the orderly conduct of meetings.

RULE 2003-3. Attendance and Cooperation at Creditors’ Meetings.

A debtor and debtor’s attorneys shall attend the meeting of creditors held pursuant to 11 U.S.C. § 341(a), though a debtor’s attorney may arrange for other counsel to attend in his or her absence, subject to proper disclosure being made pursuant to F.R.B.P. 2016, and Mont. LBR 2090-5(c), and subject to debtor’s authorization. If debtor appears and debtor’s attorney fails to appear, the trustee may, subject to directives from the U.S. Trustee, proceed with the scheduled meeting of creditors. In cases of joint petitions, both debtors must appear. In every case, it is the duty of the debtor and debtor’s attorney to provide the trustee assigned to such case (and/or the U.S. Trustee, if requested) with copies of those documents and materials specified in Mont. LBF 33, along with a fully completed Mont. LBF 33 (which documents and Form may be sent to trustees via e-mail in .pdf format), at least ten (10) days prior to the first date set for the debtor’s creditors’ meeting held pursuant to 11 U.S.C. § 341(a), unless otherwise agreed to by the trustee, along with such other books, records and documents which the trustee or U.S. Trustee may request. Failure to provide all of these documents or other materials requested by the trustee or the U.S. Trustee, or to cooperate with any inquiry or request made of the debtor, may be grounds for dismissal, conversion or denial of discharge by the Court, upon an appropriate pleading being filed with the Court.

Related Authority:

11 U.S.C. §§ 341 and 343
Federal Rule of Bankruptcy Procedure 4002
Mont. LBR 4002-1(f)

RULE 2003-4. Continuance of Creditors' Meetings.

An application seeking the continuance of a creditors' meeting set pursuant to 11 U.S.C. § 341(a) shall be made to the U.S. Trustee and **not** to the Court. The U.S. Trustee shall grant or deny such application as it deems appropriate. Grounds for continuance shall be based solely on extraordinary circumstances beyond the debtor's control, which shall not include unavailability of debtor's counsel. Written application for a continuance shall be in conformity with Mont. LBF 5, and shall be made at least ten (10) days prior to the scheduled meeting. The U.S. Trustee shall file a disposition granting or denying the application in conformity with Mont. LBF 5-A which, if the application is granted, shall include the date and time of the continued meeting. The U.S. Trustee shall serve a copy of the disposition on the debtor's attorney or on the debtor if not represented by an attorney, and to the case trustee, if applicable. If the application is granted, the debtor or debtor's attorney must notify all creditors and parties in interest of the continuance, including the case trustee, if applicable, at least seven (7) days prior to the original date set for the meeting. Such notice shall be in conformity with Mont. LBF 6. Proof of service of the mailing of such notice of continuance shall be filed with the Clerk of Court.

Committee Note:

The U.S. Trustee's calendar of dates for creditor meetings held pursuant to 11 U.S.C. § 341(a) is set generally three months in advance and can be reviewed at the U.S. Trustee's website located at www.usdoj.gov/ust/r18g_home.htm. The U.S. Trustee has the authority to grant or deny continuances of § 341(a) meetings. The application for continuance form (Mont. LBF 5) must be served upon the U.S. Trustee and **should not be filed with the Court**. The notice of continuance from (Mont. LBF 6), if granted, must be served upon all creditors, the trustee and the U.S. Trustee.

RULE 2003-5. Debtor Identification at Creditors' Meetings; and Debtor Declarations.

All debtors are required to bring to § 341(a) meetings of creditors **ORIGINAL** forms of

picture identification and proof of social security number. Acceptable forms of *proof of identification* include the following original or certified documents, provided they contain a photograph of the debtor: (1) driver's license; (2) government ID; (3) state picture ID; (4) student ID; (5) U.S. passport; (6) military ID; and (7) resident alien card. Acceptable forms of *proof of social security number* include the following original or certified documents: (1) social security card; (2) medical insurance card; (3) pay stub; (4) W-2 form; (5) IRS form 1099; and (6) Social Security Administration report. Debtors shall also sign a Declaration of Debtor(s) Under Penalty of Perjury form (Mont. LBF 36) at the time of their creditors' meeting, to be retained by the trustee or U.S. Trustee.

RULE 2003-6. Oral Notice of Continuance of Creditors' Meetings.

At the sole discretion of the case trustee, oral notice of a continuance or adjournment may be given at the time of the creditors' meeting held pursuant to 11 U.S.C. § 341(a). Written notice of the oral continuance of the creditors' meeting shall be filed with the Clerk by the trustee.

Related Authority:

Federal Rule of Bankruptcy Procedure 2003(e)

RULE 2003-7. Failure to Appear at Creditors' Meetings.

If a debtor fails to appear at the meeting of creditors scheduled pursuant to 11 U.S.C. § 341(a), the case may be dismissed or converted by the Court upon notification by the trustee or the U. S. Trustee of debtor's failure to appear (*See* Mont. LBF 7 and 7-A), unless the debtor or the debtor's attorney filed an application for continuance not later than ten (10) days prior to the scheduled creditors' meeting, as required under Mont. LBR 2003-4 above, and such application was granted by the U. S. Trustee. Failure to timely file an application for continuance may result in the case being dismissed or converted, unless the trustee or other party in interest requests that the case remain open or in the present chapter. If one debtor in a joint case fails to appear, the Court may bifurcate the joint case and dismiss or convert the absent debtor's case.

Committee Note:

The panel trustee may request that the case remain open or remain in its present chapter and is further allowed to oppose the entry of the debtor's discharge based on failure to appear. 11 U.S.C. §§ 704 and 727. Note also that dismissal on this ground falls within the scope of 11 U.S.C. § 109(g)(1) regarding filing of a subsequent petition for relief.

RULE 2004-1. Rule 2004 Examinations.

Any party in interest moving the Court for an order allowing the examination of an entity pursuant to F.R.B.P. 2004 shall make such motion in compliance with Mont. LBF 15 and shall provide a form of order in compliance with Mont. LBF 16.

Related Authority:

Federal Rules of Bankruptcy Procedure 2004 and 2005

RULE 2007-1. Patient Care Ombudsman.

Immediately upon the filing of a Chapter 7, 9 or 11 case involving a health care business, as that term is defined in 11 U.S.C. § 101(27A), or in any other case in which it appears that the appointment of a patient care ombudsman under 11 U.S.C. § 333 may be required, the debtor or its attorney shall immediately upon the filing of the case notify the Court and the U.S. Trustee of the potential need to appoint a patient care ombudsman.

Related Authority:

11 U.S.C. § 333

Federal Rules of Bankruptcy Procedure 2007.2, 2015.1, 2015.2 and 6011

Committee Note:

The Court is required to appoint a patient care ombudsman in every Chapter 7, 9 or 11 case in which the debtor is a health care business, unless, on motion of the U.S. Trustee or another party in interest filed not later than 20 days after the commencement of the case or within another time fixed by the Court, the Court finds that such appointment is not necessary for the protection of patients under the specific circumstances of the case. It is thus imperative that the Court and the U.S. Trustee receive notification immediately upon the filing of a case involving a health care business.

RULE 2014-1. Applications for Employment of Professionals.

All applications to approve the employment of professionals by the trustee, debtor in possession or committee, filed pursuant to F.R.B.P. 2014, in cases under Chapters 7, 11, 12, 13 or 15, shall be in conformity with Mont. LBF 1. **Submission of a proposed form of order approving an employment application shall not be necessary.** Absent compelling circumstances, no compensation may be earned by professionals retained by the trustee or debtor in possession until after the filing of the application.

Related Authority:

11 U.S.C. §§ 326, 327, 329, 330 and 504
Federal Rules of Bankruptcy Procedure 2014, 2016 and 6003

Committee Note:

No requirement exists under the F.R.B.P. or Code for a debtor's attorney to seek approval of employment in a Chapter 7 or 13 case. However, if such attorney seeks compensation as an administrative expense under § 330(a), Mont. LBR 2016-1 applies. *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004) held § 330(a)(1) does not allow compensation to debtors' attorneys from the estate unless they are employed in a Chapter 7 case by the trustee under § 327 with Court approval. Section 329 of the Code applies to an attorney representing a debtor under any chapter of the Code, regardless of whether the attorney applies for compensation under F.R.B.P. 2016.

It should be noted that F.R.B.P. 6003 now provides that within 20 days after the filing of a petition, the Court shall not grant relief regarding an application under Rule 2014, except to the extent that relief is necessary to avoid immediate and irreparable harm. The Court can make the order approving the application retroactive to the date of its filing.

RULE 2014-2. Standard Form of Attorney Retention Agreement; and No Unbundled Services.

(a) **Chapter 7.** All attorneys representing debtors in Chapter 7 **are encouraged** to use the standard form of Attorney Retention Agreement in conformity with Mont. LBF 3.

(b) **Chapter 13.** All attorneys representing debtors in Chapter 13 cases shall use the standard form of Attorney Retention Agreement in conformity with Mont. LBF 3-A, if they wish to have the presumption of reasonableness of their fees as described in Mont. LBR 2016-1(b).

(c) No Unbundled Services. All attorneys representing debtors in consumer Chapter 7 and 13 cases shall not unbundle their services without authorization by the Court. Attorneys representing debtors shall, at a minimum, provide the following services:

- (1) Meet to discuss and analyze the client's situation and recommend a solution;
- (2) Prepare, revise, finalize and file all necessary schedules, statements and related forms or other documents required for filing and prosecuting the client's bankruptcy case;
- (3) Obtain a credit report pertaining to the client, and check the national PACER database to confirm whether the client had previously filed a bankruptcy case;
- (4) Initiate and respond to all routine correspondence and calls to and from the trustee, United States Trustee, and/or creditors necessary to the timely administration of the client's bankruptcy case;
- (5) Attend the client's § 341 meeting of creditors;
- (6) Attend the client's hearing concerning relief from the automatic stay;
- (7) Attend the client's hearing concerning the valuation of property;
- (8) In a Chapter 13 case, also prepare, revise, finalize and file all necessary plans, and attend hearings pertaining to the confirmation of such plans;
- (9) Take all steps necessary to ensure that the client receives a discharge. Attorneys shall not eliminate the defense of adversary proceedings brought under §§ 523 or 727 from their services without the Court's prior permission; and
- (10) [Other matters.....]

RULE 2015-1. Trustee's Administrative Expenses.

A Chapter 7 trustee may expend up to \$1,000.00 for administrative expenses to preserve or protect estate assets, and may pay the fees and costs of professionals employed by the trustee or postpetition taxes owed by the estate, if they do not exceed \$1,000.00 in the aggregate per individual or entity, without prior order of the Court, provided preliminary notice is provided to the Office of the United States Trustee, and the trustee shall account for such fees and expenditures in the trustee's final motion for approval of compensation and expenses.

RULE 2015-2. Monthly Operating and Other Reports to the Court and United States Trustee.

All Chapter 11 debtors in possession (or trustees, if applicable) shall electronically file monthly operating reports with the Court, on such forms and in such manner as designated by the U.S. Trustee, on or before the 15th day of each month following the month for which such report pertains. Debtors in possession shall also timely file such other periodic reports and summaries of the operation of the debtor's business, including a statement of receipts and disbursements, and such other information as the Court or the U.S. Trustee requires. If the U.S. Trustee files a Notice of Delinquent Monthly Operating Report, in compliance with Mont. LBF 12-A, the Court shall immediately schedule a hearing and require the debtor in possession to show cause why the case should not be dismissed or converted due to the untimely filing of the monthly operating reports. The second time the U.S. Trustee files such a Notice with the Court, the debtor in possession's case may be dismissed or converted without further notice or hearing.

Related Authority:

11 U.S.C. §§ 704(a)(8), 1106 and 1107; and 28 U.S.C. § 1930(a)(6)
Federal Rules of Bankruptcy Procedure 2015(a)

Committee Note:

Additional reporting and informational requirements are imposed upon debtors in possession in small business cases pursuant to 11 U.S.C. § 1116.

RULE 2016-1. Applications for Compensation of Professionals.

(a) **Applications.** All applications for fees and costs of professionals filed pursuant to F.R.B.P. 2016 in cases under Chapters 7, 11, 12, 13 or 15 shall be in conformity with Mont. LBF 17. No compensation or reimbursement of expenses shall be paid a professional, including from a retainer, until allowed by order of the Court under this Rule. Mont. LBR 2002-4 requires special notice when requests for compensation exceed \$1,000.00. In all Chapter 13 plans, amended plans or modified plans, Debtors' counsel shall estimate the total amount of their attorneys' fees and costs, reflect any retainer paid, and specify the total amount of attorneys' fees and costs to be paid through their clients' plans, in conformity with Mont. LBF 19. If Debtors' counsel will be seeking total attorney fees and costs (including any retainer previously paid) that exceed the presumed reasonable amounts set forth in subpart (b) below, then counsel shall file a professional fee application in conformity with Mont. LBF 17 prior to the plan confirmation hearing

(or a hearing on approval of the modification of a previously confirmed plan), and, if necessary, such fee application shall be set for hearing on the same date as the plan confirmation (or modification approval) hearing.

The U. S. Trustee has established “Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330” (Appendix A to 28 C.F.R. §58) which are contained in the Appendix to these Local Rules. The U. S. Trustee has determined that compliance with the project billing format will not be required for applications seeking professional fees in an amount less than ten thousand dollars (\$10,000).

Professional fees shall be documented through contemporaneous billing records. Each task shall be itemized separately, identifying the task performed, the amount of time involved, and the fee for each time entry. The Court may deny compensation for tasks which are lumped together in one entry if the cumulative time for those tasks exceeds one hour. Lumping shall be permitted for cumulative tasks which do not exceed one hour. Professionals shall be allowed compensation at the professional’s usual hourly rate for reasonable and necessary travel time.

(b) Presumed Reasonable Fees in Chapter 13. In a Chapter 13 case, if debtor’s plan is confirmed and if debtor’s attorney uses the standard form of Attorney Retention Agreement set forth in Mont. LBF 3-A and attaches it to the fee application, and if professional fees for the debtor’s attorney do not exceed \$3,000.00, and costs do not exceed \$500.00, no application for such fees under subpart (a) will be required and no order authorizing such fees shall be necessary. A presumption shall exist that fees referred to in this subpart are reasonable and necessary, and no evidence will be required to establish the same as an administrative expense unless the U. S. Trustee, trustee, or another party in interest files a timely objection to such fees, or the Court, *sua sponte*, sets a hearing on such fees. If attorney fees or costs exceed the allowed amounts noted above, the professional must file an application pursuant to this rule, and submit evidence that the entire amount of fees and costs requested are reasonable and necessary for the proper representation of the debtor.

(c) Special Rules for Chapter 11, 12 and 13 Cases. In cases under Chapters 11, 12 and 13, reports reflecting the total of all fees and costs of professionals must be filed at least annually as long as the cases remain pending before the Court. Unless otherwise approved by the Court, authorization for any professional to receive postpetition payments from the debtor, or from any other sources for the benefit of the debtor, must be sought by written application on proper notice and shall be granted only upon a demonstration of reasonableness and necessity. Unless the Court orders otherwise, any approved postpetition retainer or payments to professionals must be deposited into a trust account and remain in such account until the Court enters an order allowing removal. Fees in excess of the retainer held by an attorney for a Chapter 12 or 13 debtor must be

paid through the Chapter 12 or 13 plan as an administrative expense pursuant to 11 U.S.C. § 503(b)(2).

(d) Fees in Dismissed Cases. All professionals shall file with the Court a final Rule 2016(b) Disclosure of Compensation, reflecting the total amount of all fees and costs that have been or will be charged to their debtor clients for all services performed through the conclusion of the case in all cases which are dismissed. The purpose of this rule is to allow the Court and other parties in interest to know the total amount charged to debtors in every case, under every chapter, prior to dismissal. The Court shall retain jurisdiction to order the filing of a formal fee application if requested by any entity or the Court, and to hear and rule on the reasonableness and necessity of all professional fees in dismissed cases prior to the entry of a Final Decree.

(e) Allowed Expenses. In addition to a professional's fees and compensation, the following expenses shall be allowed at the actual cost to the professional: postage, long-distance telephone, facsimile charges, computerized legal research, travel-related expenses, and other expenses associated with the professional's representation of the party, provided they are shown to be reasonable and necessary. Photocopy costs shall be presumed reasonable and shall be allowed at the rate of \$.10 per page, unless the professional proves a greater actual cost; provided they are shown to be necessary. Mileage shall be presumed reasonable and shall be allowed at the federal rate provided by the regulations of the Internal Revenue Code for travel by private automobile, unless the professional proves a greater actual cost; provided such mileage is shown to be necessary.

(f) Fees of Oversecured Creditors. If oversecured creditors wish to recover reasonable postpetition fees, postpetition costs, or postpetition charges provided for under the agreement under which the claim arose as a portion of the creditor's allowed secured claim pursuant to 11 U.S.C. § 506(b), the professionals retained by a creditor shown to be oversecured pursuant to 11 U.S.C. § 506(b) must file a fee application in accordance with the standards set forth in 11 U.S.C. § 330 and F.R.B.P. 2016(a). Reasonable fees and expenses of such professionals may be allowed by the Court as a portion of the allowed secured claim. Prepetition fees, prepetition costs, or prepetition charges incurred prior to the date of debtor filing the bankruptcy petition shall be itemized in the creditor's proof of claim. If professional fees and costs do not exceed \$500.00 for the filing of a motion for relief from the automatic stay pursuant to Mont. LBR 4001-1(a), such fees and costs shall be presumed to be reasonable, and no application for the same will be required and no order authorizing such fees and costs shall be necessary.

Related Authority:

11 U.S.C. §§ 330 and 506(b)
Federal Rules of Bankruptcy Procedure 2016 and 2017

Committee Note:

In a Chapter 13 case, if the total amount of fees charged by a debtor's attorney exceeds the presumed reasonable fee described in subpart (b) of this rule, the attorney must file a formal fee application with the Court detailing the total amount of fees and costs charged to the debtor. It shall be insufficient for the attorney to simply state that the fee will be a set dollar amount "plus \$ X dollars per hour thereafter." At the conclusion of all services, a final fee application shall be submitted to the Court for review under this rule, if the total fees and costs exceed those specified herein.

If Debtors' counsel anticipates that their total attorneys' fees may exceed the presumed reasonable fee set forth in subpart (b) of this Local Rule, they should set forth language in their Rule 2016 disclosures of compensation what their hourly rate will be for services rendered beyond the no-look fee (which hourly rate should be the same as set forth in the Montana Chapter 13 Model Retention Agreement, if this is employed by counsel).

The Local Rule allowing fees and expenses to an oversecured creditor only applies if such creditor seeks reasonable fees and expenses as a portion of the creditor's allowed secured claim. The Court has no interest in reviewing the fee arrangement or the fees and expenses incurred between the creditor and the professional if the creditor is paying such fees and expenses and is not seeking such fees and expenses as a portion of the creditor's allowed secured claim. Pursuant to F.R.B.P. 2002(a)(6), and Mont. LBR 2002-4, if the amount of fees and costs exceed \$1,000, then the debtor, and all parties in interest requesting special notice must be served with the notice of application for professional fees and costs (by using Mont. LBR 18).

RULE 2016-2. Attorney Fees Paid Through Chapter 13 Plans.

Except for prepetition retainers, all of debtor's attorney's fees and costs shall be paid through the Chapter 13 Plan unless otherwise ordered. Debtor's attorney may not receive the payment of fees or the reimbursement of expenses directly from the debtor, or from another party on behalf of the debtor, other than the prepetition retainer, without Court authorization. Court authorization shall also be required in all Chapter 13 cases that are dismissed or converted to another chapter, either before or after plan confirmation, when the total fees and costs exceed those presumed to be reasonable under Mont. LBR 2016-1(b). See also Mont. LBR 2016-1(d) with regard to dismissed Chapter 13 cases.

RULE 2090-1. Admission to Practice Before the Bankruptcy Court.

(a) **Admission of Attorneys.** Admission to the Bar of this Court is limited to attorneys of good moral character who are members in good standing of the State Bar of Montana. Except as provided herein, the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, shall govern the admission of attorneys to practice before the U. S. Bankruptcy Court for the District of Montana.

(b) **Attorneys for the United States.** An attorney who is not eligible for admission under Mont. LBR 2090-1(a) but who is a member in good standing of and eligible to practice before the Bar of any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character, may practice in this Court in any matter in which that attorney is employed or retained by the United States or its agencies and is representing the United States or any of its officers. Attorneys permitted to practice in this Court are subject to the jurisdiction of the Court with respect to their conduct to the same extent as members of the Bar of this Court.

(c) **Admission by *pro hac vice*.** An attorney not eligible for admission under Mont. LBR 2090-1(a) but who is a member in good standing of and eligible to practice before the Bar of any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character, and who has been retained to appear in this Court, may, upon written application to and in the discretion of the Court, be permitted to appear and participate in a particular case. Application shall be in accordance with L.R. 83.3(e) of the Local Rules of Procedure for the United States District Court for the District of Montana.

(d) **Application.** The *pro hac vice* application shall be presented to the Court and shall state under penalty of perjury: (1) the attorney's residence and office addresses, including an office telephone number, facsimile number, and an e-mail address, if available; (2) by what court(s) the attorney has been admitted to practice, the date(s) of admission and the date(s) of termination; (3) that the attorney is in good standing and eligible to practice in these courts; (4) whether the attorney has ever been held in contempt, disciplined or sanctioned by any state or federal court and the name of the court issuing such order and the date of the order, together with a copy of the order; (5) whether the attorney has previously requested a *pro hac vice* application from this Court and the case number within which the application was requested. The attorney shall further designate in the application the name and address of the local attorney who must be a member of the Bar of this Court, with whom the Court and opposing attorney may readily communicate regarding the conduct and the status of the case and upon whom papers shall be served.

(e) **Local Attorney.** The requirement to associate a local attorney admitted to practice before the U. S. Bankruptcy Court for the District of Montana may, on motion, be waived by the Court on a case-by-case basis. If such association is not waived, the local attorney shall be served with copies of all pleadings, shall attend all hearings or trials, shall be

continually informed by the attorney admitted by *pro hac vice* of the current status of all negotiations and matters occurring in the case or proceeding and shall have the local attorney's name, address, telephone and facsimile numbers, and e-mail address on all pleadings.

(f) **Fee.** The fee established for *pro hac vice* admission by the U. S. District Court for the District of Montana shall accompany the application, shall be payable to the U. S. District Court, and shall be nonrefundable.

(g) **Revocation.** The Court may revoke *pro hac vice* admission for cause at any time without a hearing.

RULE 2090-2. Notice of Change of Status.

An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under Mont. LBR 2090-1 shall promptly notify the Court of any change in the attorney's status in another jurisdiction which would make the attorney ineligible for membership in the Bar of this Court or ineligible to practice in this Court.

RULE 2090-3. Standards of Professional Conduct.

The standards of professional conduct for attorneys practicing in this Court shall include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. For a willful violation of any of these Professional Rules or of Mont. LBR 2090 in connection with any matter pending before this Court, an attorney may be subjected to appropriate disciplinary action by the Court or by any judge of the Court. In addition, the Court may refer the matter to the appropriate regulatory agency for disciplinary proceedings.

RULE 2090-4. Attorney Discipline, Suspension and Disbarment.

This Court shall enforce the disciplinary rules set forth in L.R. 83.14 of the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, when circumstances warrant discipline in this Court. The reference to "Chief Judge" in the Local Rules of Procedure of the United States District Court for the District of Montana, as amended, and as incorporated herein shall mean the Chief Bankruptcy Judge or other bankruptcy judge designated by the Chief Bankruptcy Judge.

RULE 2090-5. Temporary Co-Counsel; and Attorney Withdrawal.

(a) Withdrawal or Substitution of Attorney for a Debtor. An attorney representing a debtor may withdraw from any case or proceeding, provided either:

(1) a motion filed in compliance with Mont. LBR 9013-1, with notice, is served on both the attorney's client(s) and on any opposing attorney, allowing the client(s) or opposing attorney to file a response and request a hearing; or

(2) a consent to withdrawal is signed by the attorney and the client(s) and filed with the court, wherein the debtor, if an individual, specifies that the debtor at the specified address and phone number(s) will appear on the debtor's own behalf; or there is filed with the consent an appearance by a newly retained attorney; or the debtor, if a legal entity, specifies the name, address, phone and facsimile number, and e-mail address of the newly retained and substituting attorney.

If no response and request for hearing are filed within the 10-day period provided by Mont. LBR 9013-1 in subparagraph (1) above, then the Court may either routinely grant the motion without a hearing, or may set the motion for hearing.

If, with the consent to withdrawal, the newly retained and substituting attorney files an appearance identifying the name, address, phone and facsimile number, and e-mail address of the substituting attorney, no hearing is necessary and approval by the Court will be routinely granted.

Attorneys commencing employment in the case as newly retained and substituting attorneys for a debtor shall file a statement pursuant to F.R.B.P. 2016(b) and otherwise fully comply with Mont. LBR 2016-1 and these rules.

(b) Withdrawal or Substitution of Other Attorneys. Notice of withdrawal or substitution of attorneys other than debtor's attorney shall be deemed effective upon filing with the Clerk and shall be served upon all parties to the proceeding, the case trustee, and the U.S. Trustee.

(c) Temporary Co-Counsel at Creditors' Meetings or Court Hearings.

In the event it becomes necessary for temporary co-counsel to appear on behalf of debtors at a creditors' meeting held pursuant to 11 U.S.C. § 341(a), or in a hearing before the Court, such counsel shall file a statement as required by F.R.B.P. 2016(b), outlining such compensation as will be paid to such counsel by the debtors, if any, and the nature and limitations of any legal services to be provided by such temporary counsel. This statement shall be filed prior to the commencement of any legal services and shall be served on the debtor, the trustee and the U.S. Trustee. At the conclusion of such temporary counsel's services on behalf of the debtors, counsel shall file a "Notice of Withdrawal as Temporary Counsel for Debtor(s); With No Change in Original Attorney

for Debtor(s),” in conformity with Mont. LBF 2. Such withdrawal as temporary counsel shall be effective immediately upon filing, without further notice, hearing or order.

(d) **Notice for Removal from Service.** An attorney no longer wishing to receive notices in a case or proceeding may file a notice requesting that such attorney’s name be removed from any service list utilized in CM/ECF or in any certificate of service.

(e) **Pro Per Litigants.** If a party without an attorney fails to appear and respond in the case or proceeding after an attorney has withdrawn, defaults and other prejudicial decisions may be entered against such party.

Related Authority:

11 U.S.C. §§ 329 and 504
Federal Rules of Bankruptcy Procedure 2014 and 2016
Mont. LBR 2090-3 and 2090-5

Committee Note:

Any attorney agreeing to act as temporary counsel for a debtor to attend a creditors’ meeting or court hearing on behalf of such debtor must file a declaration of fees pursuant to F.R.B.P. 2016(b), notifying the Court and others that a fee has been paid to such counsel by the debtor (or that a fee will not be paid, if such is the case), and specifying the amount of such fee, if any, and the nature of and any limitations on the legal services to be provided by such temporary counsel. 11 U.S.C. § 504 prohibits any fee sharing between attorneys who are not members of the same firm, so any fee paid to a temporary co-counsel must be paid directly by the debtors. Co-counsel appearing under these circumstances should carefully consider the ethical issues that are attendant upon appearing as co-counsel, as well as the disclosures which should be made by debtor’s regular counsel about the use of temporary co-counsel for purposes of appearing with the debtor at the § 341(a) creditors’ meeting.

RULE 2090-6. Communications with the Court and *Ex Parte* Motions and Applications.

The Court will not receive and review letters or other communications from attorneys or any parties that do not indicate on their face that copies have been sent to all opposing attorneys or *pro per* litigants. As appropriate, such communications may be transmitted to appropriate

parties and attorneys in the case. *Ex parte* motions or applications for orders will not be granted unless it is indicated in the motion or application that the adverse party or attorney has been advised of the request, unless an emergency exists as set forth in an affidavit submitted under penalty of perjury.

RULE 2091-1. Student Practice Rule.

(a) **Purpose.** This Court and the Bar are responsible for providing competent legal services. This rule is adopted to assist practicing attorneys in providing legal services and to encourage law schools to provide clinical instruction in diverse trial work.

(b) **Activities.**

(1) An eligible law student may appear in this Court on behalf of any person in any case or adversary proceeding if:

(A) the person on whose behalf the student is appearing has consented in writing to the appearance and the supervising attorney has approved the appearance in writing; and

(B) the supervising attorney is personally present throughout the case or proceeding and is fully responsible for the manner in which the case or proceeding is conducted.

(2) In each case the written consent and approval referred to above shall be filed in the record of the case or proceeding and shall be brought to the attention of the Court.

(c) **Requirements and Limitations.** To proceed under this Rule, the law student must:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two-thirds of the total credit hours required for graduation;

(3) be certified by the Dean or designate of the student's law school as being of good moral character and competent legal ability and as being adequately trained to perform as a legal intern;

(4) be introduced to the Court by a member of the Bar of this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the student renders services; but this shall not prevent

an attorney employer, law school, or governmental agency from paying compensation to the eligible law student, nor shall it prevent any of the foregoing from making such charges for its services as it may otherwise properly require; and

(6) certify in writing that the student has read and is familiar with and will abide by the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct.

(d) **Certification.** The certification of a student by the Law School Dean or designate:

(1) shall be filed with the Clerk of Court, and, unless it is sooner withdrawn, shall remain in effect for twelve (12) months after it is filed, or until the student's admission to any bar, whichever occurs first. Under exceptional circumstances, the Dean or designate may renew the certification for one more twelve (12) month period. Law school graduates are eligible to practice under this Rule until the results of the first bar examination after their certification under this Rule are announced;

(2) may be withdrawn by the Dean or designate at any time by mailing a notice to that effect to the Clerk of Court, who shall forthwith mail copies thereof to the student and the supervising attorney; and

(3) may be terminated by this Court at any time without notice or hearing and without any showing of cause.

(e) **Supervision.** The attorney under whose supervision an eligible law student participates in any of the activities permitted by this Rule shall:

(1) be a member in good standing of the Bar of this Court;

(2) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work; and

(3) assist and counsel the law student in the activities mentioned in these Rules and review such activities with such student to ensure the proper practical training of the student and the protection of the client.

(f) ***In Propria Persona* Representation.** Nothing contained in this rule shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully have done prior to the adoption of this Rule.

PART III.

RULE 3001-1. Proof of Claim for Unsecured Deficiency.

An undersecured claim which requires an allowance for a deficiency resulting from the enforcement of a security agreement, shall be accompanied by:

(a) excerpts of the security and perfection documents that are directly germane to establishing the claim;

(b) a summary of the remaining principal balance of the debt, together with the amount of accrued unpaid interest claimed, calculated as of the date of commencement of the debtor's bankruptcy case, and the total amount alleged due;

(c) a description of the collateral; and

(d) if repossession has occurred, the date of repossession or seizure, whether the sale was public or private, the date of sale, sale price, person to whom sold, the date notice of the sale was given to the debtor and to the trustee, and an itemization of the credit allowed toward the original debt.

(e) If repossession has not occurred, the estimated time for the proposed method of liquidating the security must be given. The creditor must file a proof of claim stating the dollar amount of the claim which is unsecured (or a good faith estimate, with details providing the basis for such estimate). If the dollar amount of the unsecured component of an undersecured claim is not specified in a proof of claim, as required by this rule, a trustee or debtor in possession may disregard any unsecured component of an undersecured claim. A trustee or debtor in possession need not calculate the unsecured component by attempting to subtract the alleged value of the undersecured creditor's collateral from the total amount of the creditor's claim.

Failure to comply with this rule shall be deemed a waiver of any unsecured component of a claim, without need for formal objection by the trustee or debtor in possession, and without need for a hearing.

Related Authority:

11 U.S.C. § 501 and 506
Federal Rule of Bankruptcy Procedure 3012
Mont. LBR 3012-1

Committee Note:

This rule is intended to provide the Court, the debtor and the trustee with precise

information concerning the dollar amount of the secured and unsecured components of an undersecured claim. A creditor with an undersecured claim should specify the information required by this rule in order to separately designate the secured component of its claim and the unsecured component of its claim. In the event an undersecured claim does not specify the dollar amount of the unsecured deficiency, the unsecured component may be disregarded by a trustee or debtor in possession. A beneficiary under a trust indenture or deed of trust covered by the Small Tract Financing Act of Montana may not be allowed a deficiency claim.

RULE 3001-2. Attachments to Proof of Claim.

A proof of claim shall include those documents required by F.R.B.P. 3001(c) and (d); and an itemized summary of the account showing, **as of the date of the filing of the petition**, the unpaid principal balance, all accrued interest, forced-placed insurance, late charges, and other charges; the rate of contract or other interest; and the per diem interest accrual as **of the date of the commencement of the case**. Entities filing documents or attachments not prepared in electronically produced text shall scan and electronically file only excerpts of the documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such, and the complete exhibit must be made available to the attorneys and the Court on request. Entities filing excerpts do so without prejudice to their right to file by electronically scanning additional excerpts or the complete document with the Court. Responding entities may file by electronically scanning additional germane excerpts. Filing attachments by other than electronic means will not be allowed, except as permitted at the discretion of the Court. *See* Mont. LBR 5003-2. The following documents must be attached to any secured proof of claim and sent to the case trustee (or debtor's attorney in a Chapter 11 case): those pages of all notes, contracts or other agreements, and security and perfection documents, reflecting the names and addresses of the subject parties; the date signed, the date filed and/or recorded and/or perfected; the dollar amount of the debt; the description of the collateral; and all other information which might be necessary for a trustee or debtor in possession to verify the nature and amount of the debt, and the validity and perfection of the underlying lien.

Related Authority:

11 U.S.C. § 501
Federal Rule of Bankruptcy Procedure 3001 - 3005

RULE 3001-3. Interest on Claims of Oversecured Creditors.

If interest upon a debt is to be claimed, the proof of claim must state:

- (a) the dollar amount of interest claimed on the principal;
- (b) the rate of interest;
- (c) the date of last payment;
- (d) the unpaid principal balance on the debt after crediting the last payment;
- (e) the rate of interest from the date of the last payment;
- (f) a per diem from the date of the last payment to the date the bankruptcy petition was filed; and
- (g) per diem from and after the date of filing.

Failure to comply with this rule shall be deemed a waiver of any claim for interest upon the debt, without need for formal objection by the trustee or debtor in possession, and without need for a hearing.

Related Authority:

11 U.S.C. § 506(b)

Committee Note:

For unsecured and undersecured claims, interest accrual stops on the date of the filing of the debtor's petition, and only starts again on the secured portion of an undersecured creditor's claim on the date of confirmation of a Chapter 11, 12, or 13 plan. The amount of any creditor's claim is determined on the date of the petition filing, and includes the principal amount of the obligation plus all matured prepetition interest (accrued up to the date of the filing of the petition at the underlying contract rate), plus all fees, costs and other charges owing as of the petition date. Interest continues to accrue on oversecured claims from and after the petition date at the underlying contract rate until paid or until changed to a different interest rate by the terms of a confirmed plan. Interest begins to accrue again on the secured component of undersecured claims once a plan is confirmed and fixes the post-confirmation interest rate.

RULE 3001-4. Chapter 11, 12 or 13 Plan Superseded by Proof of Claim.

An allowed proof of claim filed in a Chapter 11, 12 or 13 case shall supersede the amount of such claim set forth in a plan, unless Mont. LBR 3012-1 applies with regard to a dispute as to

the amount of the secured claim.

Related Authority:

11 U.S.C. § 502
Federal Rule of Bankruptcy Procedure 3003(c)(4)

RULE 3002-1. Late Filed Claims in Chapter 12 and 13 Cases.

Late filed proofs of claim in Chapter 12 or 13 cases shall be deemed disallowed, without need for formal objection by the trustee or a hearing, if the trustee sends a notice to the late filing creditor using Mont. LBF 21. If a creditor files a response and requests a hearing within thirty (30) days of the date of the notice, then the creditor shall notice the contested matter for hearing pursuant to Mont. LBR 9013-1, except that such notice shall provide that the hearing on the objection and response shall be scheduled at least **ten (10) days** after the date of the creditor's response and request for hearing. If the creditor fails to file a written response to the objection to the late filed claim within (30) days of the date of the notice provided by Mont. LBF 21, the failure to respond shall be deemed an admission that the objection should be sustained by the Court without further notice or hearing. The trustee shall not pay on a claim filed after the claims bar deadlines described in F.R.B.P. 3002 or 3004, without a Court order obtained by the claimant allowing such claim.

Related Authority:

11 U.S.C. § 502(b)(9)
Federal Rule of Bankruptcy Procedure 3002(c) and 3007

RULE 3003-1. Proofs of Claim and Interest in Chapter 11 Cases.

In a Chapter 11 case, any request for a bar date by the debtor in possession for filing proofs of claim or interest shall be filed prior to the first date set for hearing on the disclosure statement. Pursuant to F.R.B.P. 2002(a), the plan proponent shall give twenty (20) days notice of the time to file proofs of claims or interests to each creditor and equity security holder.

Related Authority:

Federal Rule of Bankruptcy Procedure 2002, 3002 and 3003

RULE 3007-1. Overstated Proofs of Claim.

A proof of claim found to be knowingly overstated or false as to any material item may be disallowed in its entirety by the Court, after hearing.

Related Authority:

11 U.S.C. § 502

RULE 3007-2. Objections to Proofs of Claim.

Except as provided in Mont. LBR 3002-1 for late filed claims in Chapter 12 or 13 cases, a trustee, debtor or other party in interest may file an objection to a creditor's proof of claim in accordance with F.R.B.P. 3007, by using Mont. LBF 28. The objection shall include the legal and factual basis for the objection. The objection shall be scheduled for hearing at least thirty (30) days after the date of the filing of such objection. Objections to duplicate claims will be summarily granted by the Court without notice or hearing.

Related Authority:

11 U.S.C. §§ 102(1)(B)(i) and 9007
Federal Rule of Bankruptcy Procedure 3007

Committee Note:

Only the creditor at the address noted on the filed proof of claim and the case trustee must be served with the objection. If a federally insured depository institution is involved the service must be sent by certified mail to the officer of the institution unless the institution has appeared through an attorney, the court orders otherwise after initial certified service, or the institution waives in writing the certified mail requirement by designating an officer to receive service.

RULE 3010-1. Dividend Distribution.

In any bankruptcy case, the case trustee shall distribute dividends to all entitled creditors,

regardless of amount.

Committee Note:

Pursuant to F.R.B.P. 3010, the Court by local rule may authorize the payment of small dividends to entitled creditors and not have small dividends treated as unclaimed funds payable to the Court under 11 U.S.C. § 347.

RULE 3012-1. Valuation of Allowed Secured Claims in Chapter 11, 12 or 13.

The amount of an allowed secured claim may not be litigated at a confirmation hearing in a case under Chapter 11, 12 or 13. Unless a written consent or stipulation is filed by the affected creditor allowing the fixing of the secured claim for purposes of the plan in an amount less than the creditor's total allowed claim as set forth in a filed proof of claim, the debtor shall move for a valuation hearing pursuant to F.R.B.P. 3012 at least thirty (30) days prior to the date set for the confirmation hearing by using Mont. LBF 22.

Related Authority:

11 U.S.C. § 506
Federal Rule of Bankruptcy Procedure 3012

Committee Note:

Only the secured creditor or creditor's attorney and the case trustee need be served with a motion for valuation. If a federally insured depository institution is involved the service must be sent by certified mail to the officer of the institution unless the institution has appeared through an attorney, the court orders otherwise after initial certified service, or the institution waives in writing the certified mail requirement by designating an officer to receive service.

Note: The Court has indicated its intent to enforce this rule requiring a valuation hearing to be held at least 30 days prior to the date set for the confirmation hearing.

RULE 3015-1. Original Chapter 11, 12 or 13 Plans.

In all Chapter 11, 12 or 13 cases, the debtor, or debtor's attorney, shall file a plan and serve a copy of the plan on the trustee, all creditors and all other parties in interest, and confirm

such service has been accomplished by filing a certificate of service.

RULE 3015-2. Objections to Confirmation or Modification of Chapter 12 or 13 Plans.

A party objecting to confirmation of a Chapter 12 or 13 plan or modification of a confirmed plan must file and serve an objection not less than fifteen (15) days prior to the date set for the hearing on confirmation or approval of the modification. If the trustee has no objections, the trustee shall file a report with the Court, serving a copy on the debtor, recommending plan confirmation or approval of any modification to a confirmed plan. The Court may, without further notice or hearing, grant plan confirmation or approval of any modification of a confirmed plan if no timely objections are filed. The Clerk shall include the date objections to plan confirmation are due in the Notice of Chapter 13 Bankruptcy Case and Meeting of Creditors, and debtor's attorney shall provide notice for objections to motions to modify confirmed plans as specified in F.R.B.P. 3015(g), unless the trustee is proposing a modification and then the trustee will provide notice for objections.

Related Authority:

11 U.S.C. §§ 1223, 1224, 1225, 1229, 1323, 1324, 1325 and 1329
Federal Rule of Bankruptcy Procedure 3015(f) and (g)
Mont. LBR 2002-1(b)

RULE 3015-3. Amended Chapter 12 or 13 Plans Prior to Confirmation.

A debtor shall file any amended plan or addendum in a Chapter 12 or 13 case on or before ten (10) days prior to the date fixed by the Court for the confirmation hearing. The debtor shall file a certificate of service reflecting service of the amended plan on the trustee, all creditors, and all other parties in interest. If the trustee and all creditors have no objection to the amended plan, it will be confirmed. If an amended plan or any additional amendment or addendum is filed within five (5) days of the date of the scheduled confirmation hearing, and an objection is filed prior to or at the scheduled hearing, the plan shall be denied confirmation and the case may be subject to dismissal or conversion without further notice or hearing.

Committee Note:

NOTE: The Court has indicated it intends to strictly enforce these deadlines in the future.

RULE 3015-4. Tax Returns in Chapter 12 or 13 Cases.

During each year of the plan after confirmation, debtor shall provide: (1) a copy of the debtor's federal income tax return; (2) any request for extension of the deadline for filing a return; and (3) Forms W-2 and 1099, to the Chapter 12 or 13 trustee within 30 days after the return or document is filed with the Internal Revenue Service.

RULE 3017-1. Objections to Chapter 11 Disclosure Statements and Plans.

Unless otherwise ordered by the Court, objections to the disclosure statement or plan in a Chapter 11 case shall be filed and served not less than fifteen (15) days prior to the hearing on such statement or plan. Service of the objection shall be made on any party in interest requesting notice. The Clerk shall include the date objections are due in the notice of the hearing on the disclosure statement or plan.

RULE 3017-2. Report of Administrative Expenses in Chapter 11 Cases.

The proponent of a plan of reorganization in a Chapter 11 case shall file an estimate of administrative expenses not less than five (5) days prior to the date fixed for the hearing on confirmation of the plan. Such administrative expenses shall include, but are not limited to, the debtor's attorney's fees, accountant's fees, any other professional's fees, and the fees owing to the Clerk of Court and the U. S. Trustee.

RULE 3020-1. Quarterly Fees in Chapter 11 Cases.

In accordance with 11 U.S.C. § 1129(a)(12), the Court shall not confirm a Chapter 11 plan unless the U. S. Trustee notifies the Court by filing Mont. LBF 12 that all fees required by 28 U.S.C. § 1930 have been paid or will be paid on or before the effective date of the plan. If the U.S. Trustee files a Notice of Delinquent Quarterly Fees, in compliance with Mont. LBF 12-B, the Court shall immediately schedule a hearing and require the debtor in possession to show cause why the case should not be dismissed or converted due to the nonpayment of quarterly fees. The second time the U.S. Trustee files such a Notice with the Court, the debtor in possession's case may be dismissed or converted without further notice or hearing.

Related Authority:

28 U.S.C. §§ 1112(b)(4)(K) 1930(a)(6)
Federal Rule of Bankruptcy Procedure 2015(a)

RULE 3022-1. Chapter 11 Case Closings.

To facilitate the closing of Chapter 11 cases in accordance with F.R.B.P. 3022, the debtor in possession (or trustee) shall file a Motion for Final Decree within sixty (60) days of the Order of Confirmation of the plan in conformity with Mont. LBF 13. The motion shall be filed and served on all creditors. The motion may be immediately granted by the Court, as provided in Mont. LBR 9013-1(g)(2)(JJ). Beginning sixty (60) days after confirmation of the plan and then every thirty (30) days thereafter, the debtor in possession shall file a Status Report with the Court providing cause for the failure to file a Motion for Final Decree in accordance with the terms of this rule. Failure to file such monthly reports shall subject the case to summary dismissal or conversion by the Court, without further notice or hearing. **Provided that in the case of individual debtors, the case will remain open until completion of all payments provided for in the debtor's plan, unless otherwise ordered by the Court.**

Related Authority:

11 U.S.C. §§ 350(a); 1141(d)(5)

Committee Note:

Section 28 U.S.C. § 1930(a)(6) was amended on January 27, 1996, to provide that quarterly fees due the U.S. Trustee in a Chapter 11 case are payable after confirmation of a plan until the case is closed by the Court, **and interest accrues on delinquent quarterly fees until paid.**

PART IV.

RULE 4001-1. Motions to Modify Stay.

(a) **Motion.** A motion to modify stay under 11 U.S.C. § 362 shall be made in conformity with Mont. LBF 8. Consents to the motion shall conform to Mont. LBF 9 and 9-A. Copies, or excerpts, of security documents and proof of perfection do not need be attached to a motion to modify stay if a proof of claim has been filed on or before the motion to modify. Instead, copies, or excerpts, of security documents and proof of perfection should be attached to the proof of claim filed on or before the motion to modify, and reference to such proof of claim shall be made in the motion to modify. A proposed order shall be filed with every motion to modify in accordance with Mont. LBF 8-A. **Evidence of proof of the moving party's standing to file the motion shall be attached to the motion.**

(b) Impact of Postpetition Invoicing on Content of Motion; and Specificity Required in Both Motion and Response to Motion.

(1) **A secured creditor seeking relief from the automatic stay based upon**

allegations of a postpetition payment default by a debtor must specify that it seeks relief based on the debtor's payment default, and articulate with specificity the amount and date of the payments the debtor allegedly failed to make, and attest that it responded promptly and thoroughly to the trustee or to the debtor's reasonable requests for account information. In the event the secured creditor has not provided the debtor with the account information required by this rule, the Court may deny the secured creditor's request for recovery of attorney's fees or costs in connection with the motion, regardless of the terms of its agreement with the debtor; and the Court may order the secured creditor to pay the debtor's reasonable attorney's fees, if any, for responding to the motion.

(2) A debtor opposing relief from stay in connection with a debt within the scope of this rule shall state with specificity which allegations of the creditor's motion the debtor disputes and must append to the response either an affidavit of the debtor or copies of records showing proof of payment on the account, and articulate the debtor's legal and factual basis for asserting that the creditor is not entitled to relief from stay. The debtor's failure to meet these requirements may constitute cause for the Court to deny the debtor's request for additional time and/or for the court to consider the motion unopposed.

(3) When a Chapter 13 debtor's objection to a motion for relief from stay contests, with specificity, either the payment default or the creditor's application of payments, the creditor shall immediately transmit the debtor's payment history and a detailed accounting of how the debtor's payments were applied to the outstanding obligation to counsel for the debtor (or to the debtor directly, if not represented by counsel), by electronic or facsimile means, to ensure that the debtor has a reasonable opportunity to review this data prior to the hearing on the motion for relief from stay.

(c) **Response and Hearing.** If a debtor, trustee or party in interest files a response, then a hearing shall be noticed pursuant to Mont. LBR 9013-1. In the event such scheduled hearing date is thirty (30) days beyond the date of the motion to modify, then a preliminary hearing within such thirty (30) day period will be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response. The response and request for hearing must include the legal and factual basis for the objection and as appropriate the following:

- (1) If valuation of property is an issue, the estimation of value asserted by the respondent.
- (2) If the existence, validity, or any other aspect of the notes or security documents is an issue, such objections must be stated with particularity.
- (3) If the debtor proposes to offer adequate protection, it must state with specificity the adequate protection offered to be provided (e.g., periodic payments, substitute liens, or other indubitable equivalents).
- (4) If the debtor asserts that the debtor has made or attempted to make all delinquent payments to the moving creditor but the creditor has refused to accept such payments, the debtor shall state with specificity this fact, and state the dates of such payments, and shall provide a copy of the check or checks the debtor alleges were sent to but refused by the moving creditor.
- (5) If the moving creditor has requested that the ten (10) day stay provided for in F.R.B.P. 4001(a)(3) be waived, the debtor shall state any objection the debtor may have to the Court's order becoming effective immediately.

(d) **Stipulation to Modify Stay.** A stipulation to modify stay, filed in compliance with Mont. LBF 8-B, joined by the creditor, debtor and trustee, if any, may be filed without fee, together with a proposed order, and an order shall be promptly issued without hearing. A creditor negotiating and filing such a stipulation is not required to retain an attorney. A form of proposed order in compliance with Mont. LBF 8-C shall accompany any Stipulation to Modify Stay.

Related Authority:

11 U.S.C. § 362, 1201 and 1301

Committee Note:

In a Chapter 7, 12 or 13 case, a motion to modify stay should be served upon the debtor,

debtor's attorney, the trustee, if any, the U.S. Trustee, and any entity requesting special notice. In a Chapter 9 or 11 case, a motion to modify stay should be served upon all of the above entities and any committee appointed under the Code or its authorized agent, or if no committee has been appointed, the creditors listed under F.R.B.P. 1007(d). A stipulation to modify stay only needs to be served upon the parties signing the stipulation. Debtor's and trustee's consents to modify only need to be filed and not be served upon any other entity. Note that pursuant to Rules 7004(b)(9), 7004(g) and 9014(b), F.R.B.P., all motions directed to a debtor, in addition to being served upon counsel for the debtor, must be served upon the debtor by mailing a copy of the motion "to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing." Such service by mail can be accomplished pursuant to F.R.B.P. 9001(8), but the debtor must be served as well as his or her counsel. Proof of service upon the debtor is required. It will now be incumbent upon a creditor moving for stay relief to attach to its motion evidence of its standing to file the motion, such as an assignment from the original note holder. Too often the mortgage and note are in the name of one party while the moving party is a different party, and there is nothing appearing with the motion connecting the two together.

RULE 4001-2. Orders Granting Modification of Stay.

If, at any time during the pendency of a Chapter 13 case, an order modifying the stay is entered, no distributions will be made under the Chapter 13 plan to the creditor obtaining modification of the stay until such time as the creditor files an amended proof of claim, or either the creditor or debtor move for or stipulate to specific modification from the Court.

RULE 4001-3. Scope and Content of Account Information, and Statements Secured Creditors May Provide to Debtors Postpetition.

(a) **Scope and Purpose.** The purpose of this rule is to allow the routine flow of information from secured creditors to debtors to continue postpetition with respect to secured loans, in each bankruptcy case where the debtor retains possession of the collateral and continues to make regular installment payments directly to the secured creditor; and to direct that each secured creditor provide debtors with a contact point so that debtors can obtain specific information on the status of such loans, as needed.

It is also the purpose of this rule to make clear that, as long as a creditor complies with

this rule in furnishing account information to the debtor, such good faith attempts at compliance will not expose the secured creditor to claims of violating the automatic stay.

This rule applies in Chapters 7, 12 and 13; applies only to consumer loan relationships; and applies as long as the debtor is in bankruptcy and protected by the automatic stay. However, for cause shown and after proper notice and a hearing, the Court may direct parties to comply with this rule with regard to commercial loans, or in Chapter 11.

(b) Debts Secured by a Mortgage on Real Property

(1) For purposes of this subpart, the term “Mortgage Creditor” may include any creditor that has a claim secured by a mortgage on real property.

(2) Except as provided in paragraph (3) below, the Mortgage Creditor may provide monthly statements to all Chapter 12 and Chapter 13 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their plan, and to all Chapter 7 debtors who have indicated an intent to retain the Mortgage Creditor’s collateral in their statement of intention which has been served on the Mortgage Creditor. Monthly statements shall contain at least the following information concerning postpetition mortgage payments to be made directly to the mortgagee (“outside the plan”):

- (A) the date of the statement and the date the next payment is due;
- (B) the amount of the current monthly payment;
- (C) the portion of the payment attributable to escrow, if any;
- (D) the postpetition amount past due, if any, and from what date;
- (E) any outstanding postpetition late charges;
- (F) the amount and date of receipt of all payments received since the date of the last statement;
- (G) a telephone number and contact information that the debtor or the debtor’s attorney may use to obtain reasonably prompt information regarding the loan and recent transactions; and
- (H) the proper payment address.

(3) No monthly statement shall be required in a Chapter 12 or Chapter 13

where postpetition mortgage payments are to be made to the trustee (“through the plan”). If a Mortgage Creditor sends a monthly statement to a debtor in such a case which complies with subsection (d)(2) below, the Mortgage Creditor is entitled to the protections of subsection (d)(2).

- (4) The Mortgage Creditor shall provide any of the following information to the debtor upon the reasonable written request of the debtor:
- (A) the principal balance of the loan;
 - (B) the original maturity date;
 - (C) the current interest rate;
 - (D) the current escrow balance, if any;
 - (E) the interest paid year to date;
 - (F) the property taxes paid year to date, if any; and/or
 - (G) any other amounts due, including charges paid by lender for taxes, insurance, attorney’s fees, or other expense, the nature of the expense, and the date of the payment.

(c) **Other Secured Debts.** For the purposes of this subpart, the term “creditor” shall include any creditor that holds a claim secured by personal property, and lessors for assumed leases for personal property, for which monthly statements are provided under non-bankruptcy law or practice. For all debts secured by property other than as provided by for subpart (b)(2) above, and for assumed leases for personal property, the creditor shall provide monthly statements to the debtors in the following manner:

- (1) If the case was filed under Chapter 12 or 13 and the secured debt is paid entirely through the plan, the creditor is under no obligation to send a monthly statement to the debtor directly. However, if a creditor or lessor sends a monthly statement which complies with this rule to the debtor in such a case, then the creditor shall be entitled to the protection described in subsection (d)(2), below.
- (2) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the plan, and the creditor

sent monthly statements to the debtor prior to the bankruptcy petition, the creditor shall send monthly statements which contain the same information as, and are similar to, the monthly statements that the creditor sent to the debtor before the bankruptcy was filed.

- (3) If the case was filed under Chapter 7, or was filed under Chapter 12 or 13 and the secured debt is not paid entirely through the plan, and the creditor provided a coupon book or other similar set of invoices to the debtor, the creditor shall send to the debtor and the debtor's attorney a default letter setting forth the postpetition arrearages, upon any perceived or actual default by the debtor, and before taking any steps to modify the automatic stay.

(d) Forms of Communication; Issuance of Monthly Statements Do Not Violate the Automatic Stay.

- (1) For the purposes of this rule, creditors shall be considered to have sent the requisite documents or monthly statements to the debtor when the creditor has placed the required document in any form of communication which in the usual course would result in the debtor receiving said document, to the address that the debtor last provided to the creditor by agreement between the debtor and the creditor. Said communication may be transmitted via electronic mail, facsimile, United States Postal Service, commercial communications carrier, or such other mode as is mutually acceptable to the parties.
- (2) Creditors who provide account information or monthly statements under subparts (b) or (c) above shall not be found to have violated the automatic stay by doing so. Secured creditors may contact the debtors about the status of insurance coverage on property that is collateral for the creditor's claim, may respond to inquiries and requests or information about the account from debtors, and may send the debtor statements, payment coupons, or other correspondence that the creditor sends to its non-debtor

customers, without violating the automatic stay, provided none of these communications includes an attempt to collect the debt.

(e) Motions to Compel a Creditor to Issue Monthly Statements that Comply with this Rule.

- (1) A debtor may file a Motion to Compel Creditor to Issue Monthly Statements in Compliance with this Rule (a “Motion to Compel”) if the debtor can offer evidence that the information in sections (b), (c), or (d) is necessary. Before filing such a Motion to Compel, the debtor must make good faith attempts to contact the creditor to determine whether the information is available. The Motion must include a description of the debtor’s good faith attempts taken prior to filing the Motion, any response(s) from the creditor, and the harm the debtor has suffered, if any, as a result of the creditor’s failure to provide appropriate monthly statements.
- (2) If a creditor’s regular billing system can provide a statement to a debtor that substantially complies with this rule, but does not fully confirm to all of its requirements, the creditor may request that the debtor accept such statements, and the debtor may do so. If the debtor declines to accept the non-conforming statements, a creditor may file a motion, on notice to the debtor and debtor’s attorney, seeking a declaration of the Court that cause exists to allow such non-conforming statements to satisfy the creditor’s obligations under this rule. For cause shown, the Court may grant a waiver for purposes of a single case or multiple cases, and for either a limited or unlimited period of time. No waiver will be granted, however, unless the proffered statement substantially complies with this rule and the creditor has demonstrated that it would be an undue hardship for it to strictly comply with this rule.

RULE 4002-1. Property in Need of Attention or Protection; Debtors with Special Needs; Privacy Ombudsmen; Domestic Support Obligations; and Other Documentation.

(a) **Inventory or Equipment.** When a stock of goods or inventory, or business equipment is scheduled, the debtor shall, immediately after the general description thereof, provide a detailed list of such inventory and business equipment and the respective value, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

(b) **Need for Immediate Action.** If a stock of goods includes perishables, or if property or the business premises otherwise requires immediate attention or protection, the debtor or the debtor's attorney, when relief is ordered under Chapters 7, 12 or 13, or when a trustee is appointed under Chapter 11, shall notify the trustee of the need for immediate action. Notification shall be by personal communication or by telephone.

(c) **Debtors with Special Needs.** If a debtor has special needs, such as a hearing impairment which would require the services of a sign language interpreter, the debtor or debtor's counsel shall make the Court and the U.S. Trustee aware of such circumstances as soon as possible after the commencement of the case.

(d) **Consumer Privacy Ombudsman.** If it appears that a case may involve the sale or lease of personally identifiable information, as that term is defined in 11 U.S.C. § 101(41A), or if the appointment of a consumer privacy ombudsman under 11 U.S.C. § 332 may be required in a case, the debtor or its attorney shall immediately upon the filing of the case notify the Court and the U.S. Trustee.

(e) **Domestic Support Obligations.** Within ten days of commencing a bankruptcy case, all individual debtors shall file a "Statement of Domestic Support Obligation(s)," in conformity with Mont. LBF 30.

(f) **Documentation to be Provided to Trustees.** In addition to those documents required to be provided by Rule 4002, it is the duty of the debtor and debtor's attorney to provide the trustee assigned to the debtor's case, and/or to the U.S. Trustee, if requested, those documents and materials specified in Mont. LBF 33, along with a fully completed Mont. LBF 33 (which documents and form can be sent via e-mail in .pdf format), at least ten (10) days prior to the first date set for the debtor's creditors' meeting held pursuant to 11 U.S.C. § 341(a), along with such other books, records and documents which the trustee or U.S. Trustee may request. As provided in Mont. LBR 2003-3, failure to provide all of these documents or other materials requested by the trustee or the U.S. Trustee, or to cooperate with any inquiry or request made of the debtor, may be grounds for dismissal, conversion or denial of discharge by the Court, upon an appropriate pleading being filed with the Court.

(g) **Documentation Required by § 521.** In order to facilitate the filing of the documents required by 11 U.S.C. § 521, debtors shall file a form in substantial compliance with

Related Authority:

11 U.S.C. §§ 101(14A), 332 and 521
Federal Rule of Bankruptcy Procedure 4002
Mont. LBR 2003-3

RULE 4002-2. Annual Financial Reports in Chapter 12 Cases.

Every debtor whose Chapter 12 case has not been closed by the Court prior to the end of each calendar year shall prepare and serve on the trustee annually the following materials: an annual summary of operations, using the report form prescribed by the trustee; an annual financial statement; and a balance sheet. The latter two documents may be copies of financial statements and balance sheets provided to lenders by the debtor.

RULE 4002-3. Plan Payments in Chapter 12 Cases.

All plan payments made by the debtor in possession to the Chapter 12 trustee shall be paid by cashiers check or certified check at least ten (10) days prior to the payment dates specified in the debtor's plan, or at least twenty-five (25) days prior to such dates if paid by the debtor's personal check.

RULE 4002-4. Estimate of Administrative Expenses in Chapter 12 Cases.

The debtor shall file an estimate of administrative expenses, containing the detail required in Mont. LBR 3017-2, at least ten (10) days before the confirmation hearing.

RULE 4002-5. Monthly Financial Reports in Chapter 13 Cases.

A monthly financial report shall be filed by every debtor engaged in business within fifteen (15) days following the end of each calendar month reflecting the debtor's income and expenses, for purposes of establishing the debtor's projected disposable income.

RULE 4002-6. Filing of Income Documentation for Two Months Prior to Bankruptcy; and Turnover of Income Documentation for Six Months to Chapter 13 Trustee.

At least ten (10) days prior to the meeting of creditors held pursuant to 11 U.S.C. § 341(a), every individual debtor shall file with the Court copies of all payment advices and proof of income from all other sources received by the debtor for the two (2) month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case. Individual debtors shall provide such additional proof of income and expenses to the U.S. Trustee as may be requested. In all Chapter 13 cases, individual debtors shall turn over to the standing trustee income documentation for the six (6) month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case.

RULE 4002-7. Turnover of Income Tax Returns During Pendency of Case.

Every Chapter 11, 12 or 13 debtor shall turn over to the trustee assigned to its case (or to the U.S. Trustee in the case of a Chapter 11 debtor in possession), at the same time the same are filed with the appropriate taxing authorities, copies of all state and federal income tax returns, together with all schedules, for each year ending while the case is pending before the Bankruptcy Court.

RULE 4003-1. Claims of Exemptions.

A debtor shall claim exemptions, as required by 11 U.S.C. § 522, on Schedule C, pursuant to F.R.B.P. 1007. The MONTANA CODE ANNOTATED section or other authority under which each exemption is claimed, and each item of property claimed as exempt, together with the value of each such item, shall be described with specificity, without reference to other schedules.

RULE 4003-2. Homestead Exemptions.

If a homestead exemption is claimed by the debtor, the date and place of recordation of the homestead declaration shall be included in either Schedule A or Schedule C.

Related Authority:

MONTANA CODE ANNOTATED §§ 70-32-105, 106 and 107
Mont. LBR 2003-3, and Mont. LBF 33

RULE 4003-3. Objections to Claims of Exemption.

A trustee or other party in interest may file an objection to a debtor's claim of exemption in accordance with F.R.B.P. 4003(b), by using Mont. LBF 29. The objection shall include a legal

and factual basis for the objection. The objection to a debtor's claim of exemption must be served upon the debtor, debtor's attorney and the trustee, if any. The objecting party shall file with the objection a proposed order.

RULE 4003-4. Motions for Avoidance of Liens.

A debtor shall move to avoid liens pursuant to 11 U.S.C. § 522(f)(1) by filing Mont. LBF 24, and by serving the creditor, whose lien is subject to avoidance, or the creditor's attorney and the trustee, if any. A proposed order shall be submitted with the motion.

RULE 4004-1. Procedures for Entry of Discharge in Chapter 12 and 13 Cases.

For those Chapter 12 or 13 cases filed on or after October 17, 2005, a discharge shall not be entered until the following requirements are met:

(a) **Chapter 12.** Upon completion of a Chapter 12 plan, the debtor shall file a Motion for Entry of Discharge; and Attorney Certification, and an Affidavit in support thereof, in compliance with Mont. LBF 38 and 38-A.

(b) **Chapter 13.** Upon completion of a Chapter 13 plan, the debtor shall file a Motion for Entry of Discharge; and Attorney Certification, and an Affidavit in support thereof, in compliance with Mont. LBF 39 and 39-A.

(c) **Motion for Entry of Discharge.** In the Motion for Entry of Discharge and Affidavit, the debtor shall certify that:

(1) All domestic support obligations payable under any judicial or administrative order, or required by statute, have been paid, including but not limited to:

(A) child support and spousal maintenance and alimony that were due through the date of the motion, including all payments due under the confirmed plan for amounts due before the bankruptcy petition was filed; and

(B) any domestic support obligations that arose after the filing of the bankruptcy petition;

(2) The debtor has:

(A) not claimed a homestead exemption in excess of the cap described in 11 U.S.C. §522(q)(1); or

(B) claimed a homestead exemption in excess of the cap but there is no proceeding pending in which the debtor may be found guilty of a felony of the kind described in 11 U.S.C. § 522(q)(1)(A) or liable for a debt of the kind described in 11 U.S.C. § 522(q)(1)(B); and

(3) In a Chapter 13 case, the debtor has completed a financial management course required pursuant to 11 U.S.C. §§ 111, 1328(g)(1) and filed a certification of completion with the Court.

(d) Attorney Certification - Chapter 12. If the debtor was represented by an attorney during the course of the Chapter 12 case, the debtor's attorney shall certify that the attorney has explained the requirements for a discharge to the debtor and that to the best of the attorney's knowledge, the debtor qualifies for a discharge under §§ 521 and 1228(a) and (f).

(e) Attorney Certification - Chapter 13. If the debtor was represented by an attorney during the course of the Chapter 13 case, the debtor's attorney shall certify that the attorney has explained the requirements for a discharge to the debtor and that to the best of the attorney's knowledge, the debtor qualifies for a discharge under 11 U.S.C. §§ 521, 1308, and 1328(a),(g)(1) and (h).

(f) Service of Motion. The debtor shall serve the Motion for Entry of Discharge upon the parties to whom the debtor is or was obligated to make the domestic support payments described in subpart (c)(1) above, if any, as well as all of the debtor's creditors.

(g) No Motion - No Discharge. If no Motion for Entry of Discharge is filed, the Court will not issue a discharge in the debtor's case. If no Motion for Entry of Discharge is filed within a reasonable time after completion of the payments due under the debtor's confirmed plan, the case may be closed without the entry of a discharge order. If the debtor later files a Motion for Entry of Discharge, the debtor will be required to pay the reopening fee unless the debtor can demonstrate cause for the waiver of such fee.

PART V.

RULE 5001-1. Clerk's Office Hours and Address.

The Office of the Clerk of the Bankruptcy Court is located in the Mike Mansfield Federal Building and U.S. Courthouse, Room 303, 400 North Main, in Butte, Montana 59701. The mailing address is: Clerk of U.S. Bankruptcy Court, Mike Mansfield Federal Building and U.S. Courthouse, Room 303, 400 North Main, Butte, Montana 59701. Electronic filing through CM/ECF is mandatory, except for *pro per* filers. All original papers shall be filed with the Clerk

and not with any Judge. No papers or documents shall be filed with the U.S. District Court Clerk or at the Bankruptcy Judge's chambers. Documents electronically filed via CM/ECF shall be deemed timely filed on the date filed if they are received by the Clerk's Office on or before 11:59 o'clock p.m. on the date filed.

Related Authority:

11 U.S.C. § 301
Federal Rules of Bankruptcy Procedure 5001, 5003 and 5005

RULE 5001-2. Divisions of Court.

The Bankruptcy Court for the District of Montana is divided into the following Divisions, and Court trials or hearings are held in each Division depending upon the debtor's county of residence or principal place of business, to-wit:

(a) **Billings Division:** Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux and Yellowstone.

(b) **Butte Division:** Beaverhead, Broadwater, Deer Lodge, Jefferson, Gallatin, Granite, Lewis & Clark, Madison, Park, Powell and Silver Bow.

(c) **Missoula Division:** Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders.

(d) **Great Falls Division:** Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Meagher, Phillips, Pondera, Teton and Toole.

RULE 5001-3. Court Hearings and Creditors' Meetings.

Bankruptcy Court trials and hearings are regularly scheduled in Butte, Missoula, Great Falls and Billings. Creditors' meetings conducted pursuant to 11 U.S.C. § 341(a) are held in these four cities, and in Kalispell and are arranged and scheduled by the Office of the U.S. Trustee in its sole discretion.

Related Authority:

28 U.S.C. § 151
11 U.S.C. §§ 341(a) and 343
Federal Rule of Bankruptcy Procedure 5001(b)

RULE 5003-1. Withdrawal of Documents from Proofs of Claim.

After a proof of claim has been filed, the Clerk may, without an order of the Court, permit the substitution by the claimant of a photocopy for any original note or other instrument in writing filed in support of such claim. The original, upon return, may be endorsed reflecting its attachment to a claim in a bankruptcy proceeding.

RULE 5003-2. Exhibits to Pleadings and Proofs of Claim.

All exhibits shall be filed with the pleading or proof of claim to which they belong. Each exhibit shall be filed as a separate .pdf document; or as a single .pdf document, with each exhibit book marked and identified therein. Entities filing exhibits not prepared in electronically produced text shall scan and electronically file only excerpts of the documents that are directly germane to the matter under consideration by the Court. Excerpted material must be clearly and prominently identified as such, and the complete exhibit must be made available forthwith to the attorneys and the Court on request. Entities filing excerpts do so without prejudice to their right to file by electronically scanning additional excerpts or the complete document with the Court. Responding entities may file by electronically scanning additional germane excerpts. Oversized and voluminous attachments will not be filed and will be returned by the Clerk. Filing attachments by other than electronic means is not encouraged, but may be permitted at the discretion of the Court.

Committee Note:

Each exhibit must be filed separately or book marked separately, so that the Court and other parties may easily retrieve each individual exhibit from the electronic filing. Transcripts from Rule 2004 examinations or § 341 creditor meetings that are to be used for impeachment purposes do not need to be filed with the Court. Such transcripts only need to be filed with the Court if they will be used for evidentiary purposes.

RULE 5003-3. Judgments and Orders.

As the Director of the Administrative Office of the United States Courts has not

prescribed a form and manner for the U.S. Bankruptcy Clerk of Court to maintain judgments and orders, a prevailing party shall request that a copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and every other judgment or order as directed by the Court, be kept and indexed with the civil judgments of the district court in the judgment docket. To perfect a judicial lien, the prevailing party shall comply with applicable law.

RULE 5005-1. Electronic Filing.

Electronic filing is mandatory for all users, except for *pro per* filers. Documents shall be filed, signed, or verified by electronic means through CM/ECF and according to rules and procedures adopted by the Court. A document filed by electronic means in compliance with this rule constitutes a written paper for the purposes of applying these rules, the Federal Rules of Civil Procedure made applicable by any rule and § 107 of the Bankruptcy Code. Instructions and procedures for electronic filing shall be distributed by the Clerk to members of the Bar and interested parties, will be posted on the Court's website at www.mtb.uscourts.gov, and will be available from the Clerk's Office upon request.

RULE 5005-2. Requirements for Papers; Attorneys; Parties; and Bankruptcy Petition Preparers.

(a) **Size and Format.** Filings and attachments must conform to these specifications:

- (1) be electronically filed in .pdf format, and *pro per* filers must use 8 ½ x 11 inch paper;
- (2) be plainly legible, whether typed or duplicated in at least 12 point font size, except the master mailing list shall be in 10 point font size;
- (3) have no less than one inch (1") margins, exclusive of page numbers;
- (4) be consecutively paginated, with page numbers on the bottom of the page;
- (5) be double-spaced, except for quoted material and footnotes;
- (6) be one-sided, not 2-sided;
- (7) use a nationally recognized citation form, (i.e., The Harvard Citator or the Association of Legal Writing Directors (ALWD) Citation Manual);
- (8) NOT be stapled, but only be bound by paper or binder clip, if filed by *pro per* filers.

(b) **Identification of Attorney and Party.** The following information must appear in the upper left-hand corner of the first page of each document or pleading presented for electronic filing, **in the order specified**, except that in multiparty or multi-attorney actions or proceedings, reference may be made to the signature page for the complete list of attorneys and parties represented:

- (1) name of the attorney (or, if *in propria persona (pro per)*, the name of the party);
- (2) office mailing address;
- (3) telephone number;
- (4) facsimile number;
- (5) e-mail address;
- (6) state bar I.D. number;
- (7) specific identification of party represented by name and interest in litigation (i.e., Attorney for Debtor; Attorney for Plaintiff; etc.).

Should a party be without an address or telephone, the document shall set forth a work or third party's address or telephone number where the party may be contacted.

(c) **Signature Compliance.** The authorized CM/ECF user log-in and password required to submit documents to CM/ECF serve as the user's signature on all electronic documents filed with the Court. The log-in and password also serve as a signature for purposes of F.R.B.P. 9011, and for any other purpose for which a signature is required in connection with proceedings before the Court. Filing by electronic means requires that the signature of any persons, individually or on behalf of an entity, shall conform to either a cursive signature on the signature line or a conformed signature using a /s/ and then the typewritten name. Examples follow of acceptable signatures:

"/s/(name of person filing document)"
(typed name of person); or

Joseph P. Smith
Joseph P. Smith

A signature, whether original, photocopied, scanned or conformed, shall constitute the

person's verification that such person has read the contents of the pleading and certification that F.R.B.P. 9011(b) has been satisfied.

(d) Bankruptcy Petition Preparers. All bankruptcy petition preparers providing services to debtors filing documents before the United States Bankruptcy Court for the District of Montana shall provide the name and physical address of an authorized agent for service of process, and shall provide a physical street address for their business.

RULE 5005-3. Custody of Records and Release.

No record or paper belonging to the files of the Court shall be taken from the custody of the Clerk except with the permission of the Judge to whom the case is assigned, and a receipt given by the party obtaining it, specifying the record or paper, the date of its receipt, and the date it is to be returned. In the event the presiding Judge is not available or cannot be reached to give permission, then the Clerk or deputy in charge of the office is vested with the discretion to release any record or paper.

RULE 5005-4. Custody of Exhibits and Release.

Every exhibit placed in an electronic file shall be held in the custody of the Clerk. If, given the voluminous nature of an exhibit, a party submits an exhibit in paper form upon approval of the Court, such exhibit will be retained until the case is closed and then the Clerk shall notify the party that such exhibit may be obtained from the Clerk. If the party does not make arrangements within 30 days to obtain such exhibit, the Clerk may destroy the exhibit.

Any party may withdraw, after service to all parties, any exhibit the party has filed in paper copy or in original form, upon filing a waiver of the right to an appeal and to a new trial. If another party or witness files notice within five (5) days thereafter requesting withdrawal of the same exhibit, the Clerk shall keep the exhibit in custody until the Court has determined who is entitled to it or until all interested persons consent to its release. If exhibits are not withdrawn within thirty (30) days after the judgment has become final, the Clerk may dispose of them within a reasonable time after notice to the party offering the exhibit.

RULE 5009-1. Trustee's Report and Accounting in Chapter 12 and 13 Cases.

Within thirty (30) days following the entry of an order of conversion or dismissal, the trustee in a Chapter 12 or 13 case shall file a report and accounting of all receipts and disbursements made pursuant to the plan, and shall serve a copy of such final report and accounting on the debtor or debtor's counsel, and all creditors who have filed a timely proof of claim and other parties in interest.

In a completed Chapter 12 or 13 case, the trustee shall report to the Court that the debtor has completed all payments within thirty (30) days of the final distribution of funds under the plan. The Clerk shall issue the discharge order upon receipt of the notice of completion of the plan payments. The trustee shall file his final report and account with the Court as soon as practicable after the last disbursement check clears the trustee's bank, and shall serve a copy of such final report and accounting on the debtor, **all creditors who filed timely proofs of claim** and other parties in interest.

Related Authority:

11 U.S.C. §§ 347, 1202(b)(1) and 1302(b)(1)

RULE 5010-1. Reopening Closed Cases with Subsequent Income Tax Refunds.

Trustees shall not need to file motions or take any other affirmative actions to reserve their rights to later reopen closed cases in which the only asset such trustees may later seek to administer upon reopening is a tax refund received by the debtors based upon income earned prior to the commencement of their cases.

Related Authority:

11 U.S.C. §§ 521(1) and 554(c)

RULE 5011-1. Withdrawal of Reference.

(a) **Motion to Withdraw Reference.** A motion to withdraw a case or proceeding under 28 U.S.C. § 157(d) shall be filed with the Clerk of the District Court and heard by a District Judge. The moving party shall file a copy of the motion with the Clerk of the Bankruptcy Court.

(b) **Recommendation of Bankruptcy Court.** A Bankruptcy Judge may on the Judge's own motion recommend that a case or proceeding be withdrawn under 28 U.S.C. § 157(d). Such a recommendation shall be served on the parties to the case or proceeding and forwarded to the Clerk of the District Court for assignment to the appropriate Judge of the District Court.

(c) **Designation of Record.** The moving party shall serve and file, together with the

motion to withdraw the reference, a designation of those portions of the record of the proceedings in the Bankruptcy Court that the moving party believes will reasonably be necessary or pertinent to the District Court's consideration of the motion. Within ten (10) days after service of such designation of record, any other party may serve and file a designation of additional portions of the record. If the record designated by any party includes a transcript of any proceeding or a part thereof, that party shall immediately after filing the designation, deliver to the reporter and file with the Clerk of the Bankruptcy Court, a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the Clerk to assemble and transmit the record. The parties shall submit only that part or parts of a transcript of proceedings relevant to the issues raised in the motion for withdrawal of reference. If the issues involve only questions of law, the parties may submit an agreed statement of facts, or such parts of the record as are relevant to such questions of law, unless the District Judge considering the motion directs otherwise.

Related Authority:

28 U.S.C. § 157(d)

RULE 5070-1. Calendars and Scheduling.

(a) **Consent Calendar.** A consent calendar shall precede each regularly scheduled hearing calendar, which will allow any matter scheduled for hearing to be placed on such consent calendar for purposes of resolution by stipulation or agreement. Parties or their counsel, without the submission of evidence, may appear at the time of the consent calendar and advise the Court of the case and the settlement terms. Upon concurrence by the Court, the hearing on the matter will be vacated, and the parties shall be granted up to five (5) days (unless extended by the Court) to file a written stipulation and proposed order. The Court reserves the right to call the matter as originally scheduled.

(b) **Scheduling.** Attorneys shall schedule hearings for all matters to be heard in any division, except that only the Court shall set hearings for pretrial conferences in adversary proceedings, disclosure statement hearings, and confirmation hearings for Chapters 11, 12 and 13 cases. The Court may at anytime reschedule matters.

RULE 5071-1. Request for Continuance.

Any party requesting the continuance of a trial, hearing or conference shall:

- (a) file a motion seeking the continuance at least three (3) business days prior to the scheduled trial, hearing or conference;
- (b) advise the Court of the affected party's response to such request or what attempts have been made to gain each party's consent; and
- (c) give telephone notice of the date, time and location of, and reason for, the continued hearing to all affected parties and file written confirmation of such notice with the Clerk within two (2) business days of receiving such information from the Court.

RULE 5072-1. Courtroom Decorum.

The following procedures are to be followed in all proceedings in open court:

- (a) there shall be no oral confrontation or colloquy directly between opposing attorneys or parties;
- (b) all persons addressing the Court shall stand, unless otherwise directed by the Court, and address the Court from the podium or from a microphone location to improve the quality of the recording;
- (c) all objections shall be stated with specificity prior to any argument or explanation of the same (i.e., leading, hearsay, improper foundation, etc.);
- (d) during the testimony of a witness, attorneys shall not approach the witness box, bench, or clerk's bench without the Court's prior approval, and all persons within the courtroom shall be treated with dignity and respect;
- (e) counsel shall request assistance from the courtroom deputy if they wish to use blackboards, view boxes, or other audio-visual aids and shall make their request sufficiently in advance of the need to allow for set-up of this equipment when the Court is not in session;
- (f) counsel shall address each other and all witnesses by formal name (rather than by first name) during all court proceedings; and
- (g) all attorneys shall wear business, not business casual, attire while appearing before the Court.

RULE 5073-1. Photography, Recording Devices & Broadcasting.

(a) **Prohibition Against Certain Devices.** The use of cameras, radios, portable telephones, paging devices, tape recorders, and the like is expressly prohibited in any court facility, except with the Court's permission, and at any non-court site used for creditors' meetings, except with the trustee's permission. Failure to follow this rule shall be grounds for refusal of admission to Court or creditors' meeting facilities and may subject the offender to removal from the Court or creditors' meeting facilities and other sanctions imposed by the Court.

(b) **Broadcasting and Recording by Court.** The Court may permit electronic or photographic preservation of evidence and perpetuation of the record. The Court may also permit broadcasting, televising, or photographing of ceremonial proceedings. The Court may conduct video conferences at the established court locations in Butte, Billings, Great Falls and Missoula and at off-site locations.

RULE 5074-1. Telephone, Video, or In-Person Conferences and Hearings.

(a) **Conferences and Hearings.** The Court may schedule any matter in a bankruptcy case, contested matter or adversary proceeding to be heard by video or telephonic conference. Any party in interest affected by or involved in such case, matter or proceeding may request the Court to hear the matter by video conference, or in-person. Requests for in-person hearings shall be made in substantial conformity with Mont. LBF 26, and may be granted at the discretion of the Court. The Court may, at its discretion, hold pretrial conferences in adversary proceedings, preliminary hearings on motions to modify, preliminary hearings, hearings on reaffirmation agreements, and any other matters requiring an emergency hearing by telephone. The Court, except within its discretion, will not conduct evidentiary hearings by telephone. Any party or attorney wishing to appear for a Court hearing by way of video conference facilities shall seek and obtain permission from the Clerk of Court's Office at least three (3) business days prior to the hearing. Any party or attorney who previously arranged to appear by video shall immediately notify the Clerk of Court if the underlying matter has been settled, or if the party or attorney shall not otherwise be appearing by video.

(b) **Exchange of Exhibit and Witness Lists.** The parties involved in video and in-person conferences and hearings shall exchange proposed witness and exhibit lists and copies of all proposed exhibits, and file such lists and exhibits with the Court, at least three (3) business days prior to a hearing or trial. Witness and exhibit lists may be combined into one document. Copies of all proposed exhibits shall be attached to such list, and each individual exhibit must be electronically filed as a separate .pdf document; or as a single .pdf document, with each exhibit book marked and identified therein. The moving party in a contested matter and the plaintiff in an adversary proceeding shall identify exhibits in numerical sequence commencing with the number 1. The responding party in a contested matter and the defendant in an adversary proceeding shall identify

exhibits in alphabetical sequence. If multiple parties are involved, the parties prior to hearing or trial shall determine an identification sequence that eliminates any duplicative sequence. Failure to timely exchange and file proposed witness and exhibit lists and copies of proposed exhibits in accordance with this rule may result in the Court barring any undisclosed witness testimony and denying the admission of any unexchanged exhibits. Except as otherwise may be allowed by the Court, all exhibits shall be electronically filed.

Committee Note:

Each exhibit must be filed separately or book marked separately, so that the Court and other parties may easily retrieve each individual exhibit from the electronic filing. Transcripts from Rule 2004 examinations or § 341 creditor meetings that are to be used for impeachment purposes do not need to be filed with the Court. Such transcripts only need to be filed with the Court if they will be used for evidentiary purposes.

RULE 5078-1. Clerk's Fees in Chapter 13 Cases.

Unless otherwise ordered, the trustee in a Chapter 13 case shall pay any claim of the Clerk of Court for fees or costs incurred in a case at the time of the initial distribution under the plan. The Clerk shall provide a statement of such fees or costs to the trustee immediately following the confirmation of the plan.

Related Authority:

28 U.S.C. § 1930

PART VI.

RULE 6004-1. Notice of a Proposed Sale by a Trustee or Debtor in Possession.

A notice of a proposed sale filed by a trustee or debtor in possession shall include the 10-day notice provided in Mont. LBR 9013-1, which shall constitute a permissible reduction of time authorized under F.R.B.P. 9006(c)(1). A trustee or debtor in possession shall file with the notice a proposed order. A party in interest may file a response and request a hearing pursuant to Mont. LBR 9013-1.

Related Authority:

Federal Rule of Bankruptcy Procedure 6003 and 6004

Committee Note:

It should be noted that F.R.B.P. 6003 now provides that within 20 days after the filing of a petition, the Court shall not grant relief regarding a motion to use, sell, lease or otherwise incur an obligation regarding property of the estate, except to the extent that relief is necessary to avoid immediate and irreparable harm. The Court can make the order approving the motion retroactive to the date of its filing.

RULE 6006-1. Motions for Assumption or Rejection of an Executory Contract or Unexpired Lease.

(a) **Motion.** A motion for assumption or rejection of an executory contract or unexpired lease under 11 U.S.C. § 365 shall be made in compliance with Mont. LBR 9013-1 and in conformity with Mont. LBF 25, if appropriate, and promptly served: in a Chapter 9 or 11 case upon the entities identified above and any committee appointed under the Code or its authorized agent, or, if no committee has been appointed, the creditors listed under F.R.B.P. 1007(d). Executory contract or lease documents shall be attached to the motion, unless such documents are attached to a timely filed proof of claim or otherwise located in the file; and reference to such proof of claim by number or file location by docket number shall be made in the motion. The moving party shall file a proposed order with the motion.

(b) **Response to Motion.**

(1) A response must comply with Mont. LBR 9013-1. Any response must state with specificity the grounds for any and all objections, including citation to applicable statutes and case law, provisions of the executory contract or unexpired lease in question, and the facts regarding whether any default exists under the executory contract or unexpired lease.

(2) If the debtor or trustee proposes to offer a cure of default or adequate assurance, the response must state with specificity the terms of the cure or adequate assurance the debtor or trustee offers to provide (e.g., periodic payments,

substitute liens, or other indubitable equivalents).

(c) Stipulation for Assumption or Rejection of Executory Contract or Unexpired Lease. A stipulation for assumption or rejection of an executory contract or unexpired lease, joined by the creditor, debtor and case trustee, if any, may be filed, together with a proposed order and an order shall be issued without hearing.

Related Authority:

11 U.S.C. §365
Federal Rule of Bankruptcy Procedure 6003, 6006, 9014

Committee Note:

Debtor, debtor's attorney, the trustee, if any, the U.S. Trustee, any affected creditor, and parties requesting special notice should be served with the motion. In a Chapter 11 case, in addition to the above entities, any appointed committees, or if no committees are appointed then to the creditors listed under F.R.B.P. 1007(d), should be served with the motion.

It should be noted that F.R.B.P. 6003 now provides that within 20 days after the filing of a petition, the Court shall not grant relief regarding a motion to assume or assign an executory contract or unexpired lease in accordance with § 365, except to the extent that relief is necessary to avoid immediate and irreparable harm. The Court can make the order approving the motion retroactive to the date of its filing.

RULE 6007-1. Abandonment.

(a) **Notice.** Abandonment or other disposition of property shall be accomplished pursuant to F.R.B.P. 6007 and in conformity with Mont. LBR 11. The trustee or debtor in possession shall give notice to all entities specified in F.R.B.P. 6007. Notices of proposed abandonment filed by a trustee shall include the 10-day notice provided in Mont. LBR 9013-1, which shall constitute a permissible reduction of time authorized under F.R.B.P. 9006(c)(1). A proposed order shall be filed with the notice of abandonment. A party in interest may file a response and request a hearing pursuant to Mont. LBR 9013-1.

(b) **Tax Refunds Not Abandoned.** The closure of cases by the Court following the filing of a trustee's report of no distribution in a no-asset case, or a trustee's final report in

an asset case, shall not constitute an abandonment of tax refunds earned prepetition, whether or not the same were scheduled by debtors under 11 U.S.C. § 521(1), and such tax refunds shall not be deemed administered by the trustee during the original pendency of such debtors' cases.

Related Authority:

11 U.S.C. §§ 554
Federal Rule of Bankruptcy Procedure 6007

PART VII.

RULE 7005-1. Service by Electronic Means.

FED R.CIV.P. 5, as amended, applies in adversary proceedings. In addition to other methods of service described in FED. R. CIV. P. 5, service by electronic means is allowed provided the entity being served consents in writing to such electronic service. All authorized users of CM/ECF consent to electronic service. An entity or the Court may make service under this Local Rule through electronic means by using the Court's transmission facilities, wherein the notice of electronic filing generated by CM/ECF (which contains a hyperlink to the filed document) shall constitute service (and proof of service) of the document, pleading or other paper.

RULE 7016-1. Pretrial Procedures.

(a) **In Default Cases.** If the defendant has failed to appear or respond within the time permitted for an appearance or response, the procedure outlined herein shall not be applicable, but the Court may direct the party not in default to appear or to file a pleading for the purpose of noting a default, the entry of a default judgment, and for scheduling a date for trial on the issue of damages if required by law. If the party not in default fails to take action to prosecute its claim after reasonable notice to appear or take such action, the Court may dismiss the proceeding for failure to prosecute.

(b) Case Scheduling Conference; Pretrial Conference; and Order.

(1) Within twenty (20) days after the defendant files an answer, the Court will issue an order scheduling a telephone conference with all attorneys representing parties and with any *pro per* litigants to discuss time limits to be contained in a

case scheduling order that limits the time: (1) to complete discovery; (2) to join parties and to amend pleadings; (3) to file pretrial motions; (4) to conduct and complete alternative dispute resolution procedures; (5) to file the pretrial order; (6) to exchange exhibits and identify witnesses; (7) to file pretrial memoranda with the Court; and (8) to set the trial date.

(2) An order containing the above time limits will be issued by the Court upon completion of the telephone conference. If multiple defendants exist in an adversary proceeding, the Court, in its discretion, may issue an order scheduling a telephone conference to establish appropriate dates for the appearing defendants and to determine the status of service of process on any unserved defendants.

(3) The Court, in its discretion, may set such additional pretrial conferences for the purposes of expediting the disposition of the case, establishing early and continuing control, discouraging wasteful pretrial activities, improving thorough preparation and facilitating the settlement of the case. During the case scheduling conference, the parties shall discuss whether alternative dispute resolution may be beneficial in resolving any contested issues.

(4) Pursuant to the authorization of FED. R. CIV. P. 26(d), as incorporated in F.R.B.P. 7026, this Court through this rule and by other appropriate order directs that discovery may be commenced after the complaint is filed, without leave of Court. Furthermore, all parties are expected to **informally** satisfy the provisions of initial disclosure contained in FED. R. CIV. P. 26(a), without the need for any formal discovery requests.

(c) Initial Conference and Discovery Plan. During the case scheduling conference, the parties shall orally discuss the names and addresses of individuals likely to have discoverable information, discuss the need for and the names and addresses of possible expert witnesses, discuss the existence and availability of documents, and discuss a computation of damages, if applicable. Any information discussed shall be supplemented immediately upon discovering more complete or more accurate information. The parties shall further discuss a discovery plan that addresses the nature and complexity of the claims or defenses alleged in the litigation.

Related Authority:

Federal Rules of Civil Procedure 16 and 26
Mont. LBR 9014-1

Committee Note

Mont. LBR 7016 and 7026 are based on Rules 16 and 26, FED. R. CIV. P., as F.R.B.P. 7016 and 7026 incorporate by reference the Federal Rules of Civil Procedure. To promote thorough preparation for trial, to conserve scarce judicial resources and to expeditiously conclude litigation, the Court, pursuant to the Local Rules and the discretion and authority permitted by the rules to issue orders modifying strict compliance with the federal rules given the varying nature and complexity of the adversary proceedings filed before the Court, shall generally consolidate and coordinate the conferences and disclosures required under the federal rules.

RULE 7016-2. Continuances of Dates Set in Case Scheduling Order.

The parties and their attorneys are governed by the dates set forth in the Order entered immediately after the pretrial conference and no extensions or continuances shall be granted in the absence of a showing of good cause. Mere failure on the part of counsel to proceed promptly with the normal processes of discovery shall not constitute good cause for an extension or continuance.

RULE 7026-1. Discovery.

(a) **Initial Disclosure.** The provisions of FED. R. CIV. P. 26(a)(1), as incorporated into F.R.B.P. 7026, shall not apply in adversary proceedings unless so ordered by the Court on a case-by-case basis, **except as provided in Mont. LBR 7016-1(b)(4)**. Mont. LBR 7016-1(c) provides that the initial disclosures and the discovery plan shall be considered and discussed during the case scheduling conference. Prior to the completion of the case scheduling conference, parties may commence discovery, without leave of court. *See* Mont. LBR 7016-1(b).

(b) **Limits on and Transcripts of Depositions.** No party shall take more than ten (10) depositions, whether upon oral examination under F.R.B.P. 7030 or upon written questions under F.R.B.P. 7031. Exceptions to this rule may be granted by the Court only upon written motion showing good cause. Original transcripts of depositions need not be filed with the Clerk of Court.

(c) **Requirement of a Writing.** All objections to interrogatories, depositions, requests, applications under F.R.B.P. 7037, and all motions and replies concerning discovery matters shall be in writing and recite with specificity the offending interrogatory, deposition, request, or application. If time does not permit the filing of a written motion, the Court may, in its discretion, waive this requirement.

(d) **Objections to Discovery Process.** An objection to any interrogatory, deposition, request, or application under F.R.B.P. 7037, shall be filed within 30 days after service of the offending interrogatory, deposition, request, or application unless otherwise ordered by the

Court. The filing of an objection shall not extend the time within which the objecting party must otherwise answer or respond to any discovery matter not specifically included in the objection.

(e) **Mandatory Conference Among Attorneys.** The mandatory F.R.B.P. 7026(f) conference shall be conducted in conjunction with the case scheduling conference pursuant to Mont. LBR 7016-1(b). Attorneys are further encouraged to participate in non-court, pretrial discovery conferences to decrease contentious actions by the attorneys and parties and the filing of unnecessary discovery motions. A motion concerning a discovery dispute shall not be filed until all attorneys have explored the possibility of resolving the discovery matters in controversy. The Court will not consider any motion concerning a discovery matter unless the motion is accompanied by a statement from the attorney that a good faith effort has been made by the attorney to resolve the discovery matter at issue.

(f) **No Filing of Discovery with Court.** Discovery of any type shall not be filed with the Court at any time unless a discovery dispute occurs and appropriate motions concerning the dispute are filed or the Court directs the parties to file discovery. A notice that some type of discovery is occurring shall not be filed with the Court.

(g) **Motions to Compel.** After a discovery request is objected to or not complied with in a timely manner, and if not otherwise resolved under subsection (e), it is the responsibility of the party initiating discovery to place the matter before the Court in a timely manner. To compel an answer, production, designation, or inspection, a motion must be filed under F.R.B.P. 7037, and in compliance with Mont. LBR 9013-1. However, a party properly noticed of a deposition must appear and submit to the deposition unless a motion to quash has been granted.

(h) **Other Discovery Motions.** Motions for a protective order under F.R.B.P. 7026(c) and motions to compel physical or mental examination, including F.R.B.P. 7035, shall comply with Mont. LBR 9013-1 and subsection (f) hereof.

(i) **Discovery Replies.** A response to a discovery motion and request for hearing shall be filed in compliance with Mont. LBR 9013-1.

(j) **Compliance with Discovery Orders.** After the Court has ruled on a discovery motion, any answer, production, designation, inspection, or examination required by the Court shall be done within ten (10) days after the entry of the order of the Court, oral or otherwise, unless otherwise ordered by the Court.

(k) **Failure to Comply with Order.** Should a party fail to comply with an order of the Court concerning discovery motions, it is the responsibility of the objecting party to place the matter before the Court by a proper motion for supplementary relief under F.R.B.P. 7037.

(l) **Unnecessary Discovery Motions or Objections.** The presentation to the Court of unnecessary discovery motions or requests, as well as unwarranted opposition to proper discovery proceedings, may subject the offender to remedies and sanctions, including the imposition of costs and attorney fees.

RULE 7055-1. Default and Default Judgment.

(a) **By the Clerk.** A judgment of default may be entered by the Clerk upon application for default judgment with affidavits and amount due, including costs and disbursements if any, filed by the party entitled to judgment other than under 11 U.S.C. §§ 523 or 727. The affidavit shall include a statement that no defense or other response of any kind has been received, or if received shall detail the defense or other response received. If the party in default has appeared in the proceeding, notice of the application for default judgment shall be served pursuant to F.R.B.P. 7055 as it incorporates FED. R. CIV. P. 55(b)(2). The Court may order a hearing on any application for default judgment.

(b) **Documents to Submit.** When a party is entitled to have a default judgment entered by the Clerk pursuant to F.R.B.P. 7055 and FED. R. CIV. P. 55(b)(1), the party must submit the following:

(1) application for Clerk's entry of default pursuant to subsection (2) below;

(2) the actual Clerk's entry of default, which will be completed by the Clerk's Office when the required information is verified;

(3) a motion for entry of default judgment by the Clerk pursuant to (4) below; and

(4) a proposed default judgment with a statement showing the following:

(A) the principal amount due, not to exceed the amount of the original demand, giving credit for any payments and showing the amounts and dates of all payments;

(B) a computation of accrued interest to the proposed date of judgment; and

(C) any costs and taxable disbursements claimed.

(c) **Affidavit.** An affidavit of counsel or the party seeking default judgment must be attached to the default request showing:

(1) that the party against whom judgment is sought is not an infant, an incompetent person, or in the military service;

(2) that service of the summons and complaint was properly made in compliance with F.R.B.P. 7004;

(3) that the party has defaulted in the obligation to appear or respond in the action;

(4) that the amount shown by the statement is justly due and owing and that no part thereof has been paid except as stated; and

(5) that the disbursement sought to be taxed has been made in the action or will necessarily be made or incurred.

The Clerk shall then enter judgment for principal, interest, and costs.

(d) **By the Court.** When applying for entry of default judgment pursuant to F.R.B.P. 7055 and FED. R. CIV. P. 55(b)(2), the following papers must be filed:

(1) a motion for entry of default judgment;

(2) a proposed default judgment; and

(3) an itemized statement regarding damages being requested and the basis therefor.

Related Authority:

Federal Rule of Bankruptcy Procedure 7055
Federal Rule of Civil Procedure 55

RULE 7056-1. Summary Judgment.

(a) **Summary Judgment Motions.** In addition to the following requirements, Mont. LBR 9013-1 and Mont. LBR 9013-2 shall apply to summary judgment motions, except for provisions dealing with the noticing of hearings. No hearings shall be held in connection with summary judgment motions unless ordered by the Court.

(1) **Statement of Uncontroverted Facts.** A separate, short, and concise “Statement of Uncontroverted Facts” must accompany every motion for summary judgment. Failure to submit this statement constitutes grounds for denial of the motion. The statement shall set forth separately each fact, in serial, not narrative form, and shall specify the specific portion of the record where the fact can be found (e.g., affidavit, deposition, etc.).

(2) **Statement of Genuine Issues.** Opposition to a motion for summary judgment, if any, must be filed within ten (10) days after the motion is served and must comply with Mont. LBR 9013-1. A separately identified, short, and concise “Statement of Genuine Issues”, setting forth the specific facts which the opposing party asserts establish a genuine issue of material fact precluding summary judgment in favor of the moving party, must be filed by the party opposing the motion together with an opposition brief.

(3) **Facts Admitted.** All material facts in the moving party’s Statement of Uncontroverted Facts are deemed to be admitted unless controverted by a Statement of Genuine Issues filed by the opposing party.

(4) **Time for Filing.** Summary judgment motions must be filed by the date specified in the case scheduling order **for the filing of pretrial motions.**

(5) **Stipulation.** Alternatively, the parties may file a stipulation setting forth a “Statement of Stipulated Facts” with a representation that no genuine issues of material fact exist. Such stipulation is solely for the purpose of considering the summary judgment motion and is not otherwise binding.

(b) **No Tolling.** Even though a summary judgment motion may be filed by a party, such motion does not toll the period of time for filing a F.R.B.P. 7012(b) motion or answer, or for complying with any other dates set forth in a pretrial scheduling order.

(c) **Consideration by the Court.** Nothing in this rule shall require the Court to review portions of the record in response to a motion where the moving papers do not make specific reference to portions of the record. To expedite a decision or for other good cause, the Court may, on notice to all parties, rule on a motion before the expiration of the 10-day period ordinarily permitted for filing opposition papers.

(d) **Oral Arguments.** Unless the Court orders otherwise, no formal hearing on a motion for summary judgment will be conducted and the Court shall proceed to consider and rule upon the merits of any such motion upon the expiration of the reply deadline without oral arguments by the parties.

Related Authority:

Federal Rule of Bankruptcy Procedure 7056
Federal Rule of Civil Procedure 56

PART IX.

RULE 9001-1. Definitions.

The terms “documents” and “papers” as used in these rules include those filed or transmitted by electronic means.

RULE 9003-1. *Ex Parte* Contact.

No attorney, accountant, party in interest, or any of their employees shall engage in any *ex parte* meetings or communications with the Judge or with Chamber’s staff concerning any disputed issue of fact or law in a particular case, matter or proceeding. This rule does not limit or prohibit *ex parte* presentation of emergency or administrative matters, or *ex parte* applications contemplated by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or these Local Rules.

RULE 9004-1. Case Numbering for Pleadings.

The case number provided in every pleading filed with the Court shall include a reference to the chapter under which the case is then pending. Case numbers shall be consistent with the following example: 03-12345-13, with the first set of numbers being the year in which the case was filed, the second set of numbers being the actual case number, and the third set of numbers being the chapter under which the case is presently pending. It shall not be necessary to include the initials of the U.S. Bankruptcy Judge assigned to the case as a part of the case number.

RULE 9005.1. Constitutional Challenge to a Statute – Notice, Certification, and Intervention.

In any case in which the constitutionality of (a) an Act of Congress is brought into question and in which the United States or any agency, officer, or employee thereof is not a party, or (b) a statute of a state is brought into question and in which the state or any agency, officer or employee thereof is not a party, the party raising the constitutional issue shall comply with 28 U.S.C. § 2403, FED.R.CIV.P. 5.1 or MONT.R.CIV.P. 24(d), or the applicable rule or statute of any other state.

RULE 9006-1. Time.

If the time period prescribed by rule, statute or order is less than eight (8) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded. When a notice or other paper prescribes that some act occur and such notice or paper, other than process, is served by mail or electronic means, three (3) days shall be added to the prescribed time period. Three (3) days shall not be added to the applicable time period when such time period is given in open court.

Related Authority:

Federal Rules of Bankruptcy Procedure 7005 and 9006(f)
Federal Rule of Civil Procedure 5(b)(2)(D)
Mont. LBR 5009-1

RULE 9007-1. Notice to Creditors and Others in Chapter 7 Asset Cases, and Chapter 12 and 13 Cases.

Unless otherwise specified in the Federal Rules of Bankruptcy Procedure, after the time for filing claims has expired in Chapter 7, 12 and 13 cases, notice need only be served on the debtor(s), the case trustee, and their respective attorneys, the U. S. Trustee, creditors having timely filed proofs of claim, and entities specifically requesting copies of all notices; provided, however, all creditors on the Clerk of Court's mailing list shall be served with copies of the final reports and accounts filed by Chapter 7 trustees; and only those creditors who filed timely proofs of claims shall be served with copies of final reports and accounts filed by Chapter 12 or 13 trustees.

Related Authority:

Federal Rules of Bankruptcy Procedure 2002(h)

RULE 9009-1. Form of Chapter 12 and 13 Plans.

(a) **Chapter 12 Plans.** A Chapter 12 plan shall be filed within ninety (90) days of the petition date on Mont. LBF 14, and must include the projected income and expenses for the term of the plan, and a liquidation analysis.

(b) **Chapter 13 Plans.** Debtor's Chapter 13 plan shall conform to Mont. LBF 19 unless, for good cause, the debtor obtains leave from the trustee or the Court to submit an alternative form of plan. Requests for such leave from the Court shall be made by filing Mont. LBF 20, accompanied by a proposed Order using the form specified in Mont. LBF 20-A.

Related Authority:

11 U.S.C. §§ 1221 and 1321

Committee Note:

Debtors shall file and serve all creditors and the trustee with Debtors' Chapter 12 or 13 plans. Debtors only need to serve the Chapter 13 trustee with the motion for leave to file alternative form of Chapter 13 plan (Mont. LBF 20). In Chapter 13 cases, reference should be made to the special rules that pertain to estimated attorney fees and costs, as contained in Mont. LBR 2016(a), and the Committee Note pertaining to such Local Rule.

RULE 9011-1. Signing of Papers; Representations to the Court.

(a) **Signing of Papers.** All pleadings, motions and other papers that are submitted for filing shall be signed by an attorney of record in the attorney's own name, or if there is no attorney, by the party, except that the petition, schedules, statements and plan, if any, shall be signed by the debtor(s). See Signature Compliance, Mont. LBR 5005-2(c).

(b) **Electronic Signatures.** Any person signing a document to be electronically filed shall use either "/s/ Joseph P. Smith [person's name]" or "~~Joseph P. Smith~~ [electronic cursive signature]" when filing documents electronically. This shall constitute the signature of the person for purposes of F.R.B.P. 9011. The original declaration under penalty of perjury relating to the petition, statements, schedules, and any amendment to any of these types of documents, shall be transmitted by personal delivery, mail, or electronic means to the Clerk and, if necessary, shall be scanned into the CM/ECF system. The signature appearing on the electronic document shall be the original. The Clerk shall not retain any originally signed documents, but shall return them to the submitting person, provided such person has presented to the Clerk a stamped, self-addressed envelope. If no envelope is presented the document will be destroyed. Any password required for electronic filing shall be used only by the entity to whom the password is assigned, and by authorized members and employees of an entity to whom the password is assigned.

RULE 9011-2. Reminders to Court.

In the event a Judge has under advisement any matter, including, but not limited to, a motion or decision in a bench trial, for a period of more than sixty (60) days, each party affected by the undecided matter shall send to the Judge a letter particularly describing the matter under advisement and stating the date the matter was taken under advisement. As long as the matter remains under advisement, at intervals of forty-five (45) days thereafter, each affected party shall send a similar letter to the Judge.

RULE 9013-1. Motion Practice.

(a) **Applicability.** This Rule applies to all motions, applications and other pleadings requesting an order, unless governed by Mont. LBR 9013-1(g), in all contested matters and adversary proceedings.

(b) **Form.** All motions, including objections to discovery, shall be in writing, except those made during trial or hearing.

(c) **Content of Motion.** Motions, in the body of the motion or in an accompanying brief, shall state with particularity the relevant law by section and the relevant procedure by rule upon which the moving party relies, shall specify all relief requested, and shall include a brief statement explaining why the relief should be granted. If a motion consists of several documents, the moving party shall serve to any party germane excerpts of all documents and all exhibits.

(d) Service of Motion, Response and Other Pleadings.

(1) **Minimum Service.** In addition to all parties entitled to service under the Federal Rules of Bankruptcy Procedure, at a minimum, parties shall electronically serve notice of their respective papers upon all opposing attorneys, the U.S. Trustee, the case trustee, if any, and any party appearing *pro per* and serve by mail any entity not receiving electronic service. The serving party shall file a Certificate of Service with the Clerk for all entities not receiving electronic service but receiving service by mail or other means.

(2) **Certificate of Service or Transmittal.** Unless otherwise noted herein, an original certificate of service shall be incorporated in, or attached to, each original pleading whenever service or transmittal of a document is accomplished by mail or other means, and shall be filed with the Clerk. A certificate of service does not need to include entities served electronically through CM/ECF. The copies served on other entities shall also reflect such proof of service. All proofs of service, except those made by the Clerk or by electronic service under Mont. LBR 9013-1(d)(3), shall be made by verified statement (i.e., "under penalty of perjury") identifying the document and stating the date on which it was served or transmitted, the method by which service was accomplished and shall include the name and address of each entity served.

(3) **Service by Electronic Means.** For purposes of service of motions, documents, pleadings and other papers, FED. R. CIV. P. 5(b), as amended, shall apply. Service by electronic means is allowed provided the entity being served consents in writing to such electronic service. All authorized users of CM/ECF have consented to receiving electronic service. An entity or the Court may make service under this

Local Rule through electronic means by using the Court's transmission facilities, wherein the notice of electronic filing generated by CM/ECF (which contains a hyperlink to the filed document) shall constitute service of the motion, document, pleading or other paper, without the need for a separate certificate of service on those parties served by electronic means.

(e) **Notice of Opportunity to Respond.** After each motion, in bold and conspicuous print, the moving party shall include the following language:

**NOTICE OF OPPORTUNITY TO RESPOND
AND REQUEST A HEARING**

If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. The responding party shall schedule the hearing on the motion at least twenty (20) days after the date of the response and request for hearing and shall include in the caption of the responsive pleading in bold and conspicuous print the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____

Time: _____

Location: _____

If no objections are timely filed, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted.

(f) **Response to Motion.** Unless otherwise provided by these Local Rules, any entity objecting to a motion shall file a response and request a hearing within ten (10) days of the date of the motion and shall, in the response, notice the contested matter for hearing by including in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption in bold and conspicuous print the Notice of Hearing as specified in the subpart (e) above. The notice of the hearing shall provide that the hearing on the contested matter shall be scheduled at the earliest hearing day following the expiration of the twenty (20) days counted after the date of the response and request for hearing. If no response and request for hearing is filed within ten (10) days of the date of the motion, the Court may grant the relief requested as a failure to respond by any entity shall be deemed an admission that the relief requested should be granted. Any response must state with specificity the grounds for any and all objections, including citation to applicable statutes and case law, provisions of any executory contract or unexpired lease in question, and the facts regarding whether any default exists.

(g) Exception for Specific Matters.

(1) Matters Governed by Other Rules. The following matters are governed by the identified Rules and follow a similar procedure as set forth in Mont. LBR 9013-1:

- (A) Motions to Modify Stay, Mont. LBR 4001-1;
- (B) Objections to Proofs of Claim, Mont. LBR 3007-2;
- (C) Objections to Exemptions, Mont. LBR 4003-3;
- (D) Motions to Avoid Liens and Nonpossessory, Nonpurchase-Money Security Interests, Mont. LBR 4003-4;
- (E) Motions for Assumption or Rejection of Executory Contracts and Unexpired Leases, Mont. LBR 6006-1;
- (F) Motions to Dismiss or Convert, Mont. LBR 1017-1; and
- (G) Objections to Late Filed Claims, Mont. LBR 3002-1.

(2) Matters the Court Will Routinely Grant or Deny, with the Right to Request a Hearing. The following matters will be routinely granted or denied, without notice or hearing, in the Court's discretion, with any party in interest having the right to object, request a hearing and schedule a hearing to reconsider the issuance of any Order within ten (10) days of the date of the Order:

- (A) Employment of Professionals;
- (B) Change of Venue;
- (C) Motion for Rule 2004 Examination;
- (D) Dismissal for Failure to Pay Filing Fee, *see* Mont. LBR 1006-1(b)(3);
- (E) Extending the Time to File Dischargeability Complaint;
- (F) Extending Time to Pay Filing Fee;
- (G) Extending Time to Object to Discharge;

- (H) Redemption of Property;
- (I) Substitution of an Attorney;
- (J) Amending Schedules, or Statement of Financial Affairs;
- (K) Motion to Appear *pro hac vice*;
- (L) Reaffirmation Agreements (when signed by debtor, creditor and attorney);
- (M) Continuance/Rescheduling of Hearing;
- (N) Debtor's Motion to Convert from Chapter 11 to Chapter 7;
- (O) Debtor's Motion to Dismiss from Chapter 12 or 13, if not previously converted;
- (P) Entry of Default;
- (Q) Expediting Hearing;
- (R) Extending Time to File Proofs of Claim;
- (S) Participation in ASCS Program;
- (T) Pay Filing Fees in Installments;
- (U) Recusal of Judge;
- (V) Reopening Chapter 7, 11, 12, or 13 Case;
- (W) Rescission of Reaffirmation Agreement;
- (X) Establish **Bar Date for** Proofs of Claim;
- (Y) Conduct Appraisal by Creditor of Debtor's Property;
- (Z) Withdrawal of Trustee's No Distribution Report;

- (AA) Motion for Final Decree in Chapter 11 case;
- (BB) Leave to Appeal;
- (CC) Stay Pending Appeal;
- (DD) Motion to File Briefs Longer than 15 pages;
- (EE) Extending Time to File Motion to Dismiss Under § 707(a) or (b);
- (FF) Extending Time to File Schedules and/or Statements of Financial Affairs;
- (GG) Notice of Amendment of Statement of Social Security Number;
- (HH) Compelling Turnover of Documents to the U.S. Trustee; and
- (II) Motion to Approve Compromise and Settlement [provided there are no parties who might object].
- (JJ) Motion to Extend Time to File Objections to Claims of Exemption Under Rule 4003(b);
- (KK) Motion to Defer Entry of Discharge Under Rule 4004(c)(2); and
- (LL) Motion by Chapter 7 Trustee for Authority to Operate Business Under § 721; and
- (MM) Motion to Extend Time to Obtain 15-Day Extension of Temporary Exemption from Credit Counseling Requirement Under § 109(h)(3).

In its orders granting or approving the above-described motions, the Court will provide notice to third parties of their right to object and request a hearing within ten (10) days.

(h) **Notice Required Instead of Motion.** Notices and not motions may be filed for the following matters:

- (1) Trustees' deposit of funds into Court registry;

- (2) Debtors' conversion of a case from Chapters 12 or 13 to another chapter; and
- (3) Debtors' amendment of petition, schedules, statement of financial affairs, and any other statement, *see* Mont. LBR 1007-1 and 1009-1.

(i) **Proposed Order.** A separate original, proposed order shall be submitted with the motion, except in the case of motions for summary judgment; dismissal for abuse under 11 U.S.C. § 707(b); voluntary dismissal of a Chapter 13 case; employment of professionals; reaffirmation of debt; trustee compensation and expenses; enlargement of time to file schedules or statements of financial affairs; or in such other instances where the Court does not require a formal order. If the moving party is unsure about the appropriate form of proposed order to submit to the Court, an order in compliance with Mont. LBF 34 will be acceptable.

In all forms of proposed orders submitted to the Court, it shall not be necessary to include the following signature line, as the Court has its own template for the following:

BY THE COURT:

Hon. [Name of Judge]
United States Bankruptcy Court
District of Montana

Proposed Orders should be submitted without the above language.

(j) **Attendance at Hearings.** Any party proposing or opposing a motion or application who does not intend to actively pursue or oppose the same shall immediately notify all attorneys of record, *pro per* parties, and the Clerk, so that the Court, all attorneys, and any *pro per* parties are not required to devote unnecessary attention to the matter or to appear in court. Unless excused by the Court, the failure of any party to attend a duly noticed hearing shall be deemed a waiver of the pleading, objection, or motion, and a consent to sustaining or granting the relief sought by the attending party.

(k) **Motion to Vacate or Amend an Order.** A motion under F.R.B.P. 9023 or 9024 (or under FED. R. CIV. P. 59 or 60) must be filed within ten (10) days from the date of the order. Motions captioned as Motions to Reconsider shall be treated as Motions for Relief from a Judgment or Order and should set forth the grounds alleged to satisfy the criteria set forth in F.R.B.P. 9023 or 9024 (or FED. R. CIV. P. 59 or 60).

Related Authority:

RULE 9013-2. Briefs and Memoranda of Law.

(a) **Memoranda of Law.** Motions, responses to motions, objections, and responses to objections shall be supported by a memorandum of law filed with or as a part of the motion, objection or response, except as provided in subsection (b) below. Such memoranda shall be succinct and shall not exceed 15 pages in length without prior leave of the Court and shall include a concise statement of **the facts and** each basis for the pleading with relevant citations **to legal authorities**. Memoranda opposing the motion or objection shall be filed within ten (10) days after service of the motion or objection, or as otherwise directed by the Court and shall not exceed ten (10) pages in length, without prior leave of the Court. Memoranda in support of or in opposition to motions for summary judgment shall not exceed 25 pages in length. Any reply memoranda by the party moving for summary judgment shall not exceed 10 pages. Parties who cite authority not generally available on WESTLAW shall provide a copy to the Court. [*See also* Mont. LBR 7056-1 for special requirements applicable when the memorandum of law is being filed in support of a motion for summary judgment.]

(b) **Motions Not Requiring Memoranda of Law.** Unless otherwise directed by the Court, memoranda of law are not required for the following motions:

- (1) to obtain an extension of time, provided that the request is made before the expiration of the period originally prescribed by applicable rule, statute, order, or as extended by previous order;
- (2) to continue a pretrial conference, hearing, motion, or the trial of an action;
- (3) to demand a more definite statement;
- (4) to waive the debtor's appearance at the 11 U.S.C. § 341 meeting;
- (5) to amend the petition or schedules or statements;
- (6) to effect a substitution of parties;
- (7) all motions routinely granted under Mont. LBR 9013-1(g)(2); or
- (8) compelling turnover of property to the trustee.

RULE 9014-1. Contested Matters.

Unless requested by a party and allowed by the Court, in its discretion, the Part VII rules identified in F.R.B.P. 9014(c) shall not apply to any contested matter. The subpoena powers of attendance and production allowed under F.R.B.P. 9016 apply in contested matters, which are separate and distinct from the Part VII rules specified in F.R.B.P. 9014(c).

Related Authority:

Federal Rules of Bankruptcy Procedure 7004 and 9014
Mont. LBR 7016-1

Committee Note:

Pursuant to Rules 7004(b)(9) and 9014(b), F.R.B.P., all motions directed to a debtor, in addition to being served upon counsel for the debtor, must be served upon the debtor by mailing a copy of the motion “to the debtor at the address shown in the petition or to such other address as the debtor may designate in a filed writing.” Such service can be accomplished by First Class Mail, but the debtor must be served as well as his or her counsel. Proof of service upon the debtor is required.

RULE 9015-1. Jury Trials.

(a) **Applicability of Certain Federal Rules of Civil Procedure.** FED. R. CIV. P. 38, 39, 47-51, and 81(c), insofar as they apply to jury trials, apply in all cases and proceedings in this Court, except that a demand made under FED. R. CIV. P. 38(b) shall be filed in accordance with F.R.B.P. 5005.

(b) **Consent to Have Jury Trial Conducted by Bankruptcy Court.** If the right to a jury trial applies and a timely demand has been filed under FED. R. CIV. P. 38(b), the parties may consent to have a jury trial conducted by the Bankruptcy Court under 28 U.S.C. § 157(e). Parties must jointly or separately file a statement of consent no later than thirty (30) days after the date for demand. Failure to affirmatively file a consent to a jury trial shall be deemed to be a lack of consent.

(c) ***Voir Dire.*** Unless otherwise ordered, interrogation of prospective jurors on *voir dire* examination shall be conducted by the Court. The Court, in its discretion, may permit questions to be submitted in writing in advance of jury selection or orally at the side of the bar during *voir dire*.

(d) **Time for Filing a Demand for Jury Trial After Removal.** If at the time of removal all necessary pleadings have been served, a party entitled to a jury trial must demand one within 20 days after the Notice of Removal is filed; otherwise, within 20 days after service of the notice of filing of the Notice of Removal on the party entitled to a jury trial. A party making an express demand for trial by jury prior to removal, in accordance with federal or state law, need not make a demand after removal. If applicable state law in the court from which the case is removed does not require the parties to make express demands to claim a trial by jury, the parties must make demands after removal, in accordance with this paragraph, unless the Court directs them to do so within a specific time. The Court may make such a direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make a jury demand as directed under this sub-paragraph constitutes a waiver of trial by jury.

RULE 9019-1. Alternative Dispute Resolution and Settlement Conferences.

(a) **Generally.** The Court encourages the use of Alternative Dispute Resolution (“ADR”) in any adversary proceeding or contested matter where the parties believe the contested issues may be resolved through ADR. The Court will discuss ADR with the parties during the case scheduling conference. *See* Mont. LBR 9014-1 for applying ADR to contested matters.

(b) **The Early Neutral Evaluation Process and Goals.** The provisions of the District Court Local Rules regarding Early Neutral Evaluation (“ENE”) shall apply in Bankruptcy Court, subject to modifications necessary to ensure a specialized panel and requirements appropriate to bankruptcy issues. Upon request and consent of all parties, an adversary proceeding or contested matter will be submitted to ENE and the deadline for completing the ENE process shall be set forth in the Case Scheduling Order. The Court, upon request, will coordinate the initiation of ENE in any adversary proceeding or contested matter.

Committee Comment:

The Bankruptcy Section of the State Bar of Montana has established an Alternate Dispute Resolution Panel. The names of individuals available to mediate disputes in the context of bankruptcy cases is maintained on the Bankruptcy Section’s Internet web page.

RULE 9022-1. Notice of Judgment or Order.

Pursuant to FED. R. CIV. P. 5(b), as amended, the Court may serve notice of entry of a judgment or order through several methods, including electronic means, upon an entity’s consent,

by using the Court's transmission facilities, wherein the notice of electronic filing generated by CM/ECF (which contains a hyperlink to the filed document) shall constitute service of the order or judgment.

RULE 9029-1. Local Rules.

(a) Matters Not Covered by Local Rules.

(1) **Consistent Practice.** In any matter not covered by these Local Rules the Court may regulate practice in any manner not inconsistent with the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure.

(2) **Suspension of Rules.** The Court, upon its own motion or the motion of any party, may change or dispense with any of these Local Rules in the interests of justice.

(3) **Good Cause.** A motion for waiver of these Local Rules may be approved if the moving party demonstrates good cause for a waiver.

(b) District Court Authorization To Amend.

The U.S. District Court Judges of the District of Montana, by a majority, authorizes by their approval of these Local Rules the Bankruptcy Judges of the District to make and amend rules of practice and procedure pursuant to FED. R. CIV. P. 83, but not duplicative of, Acts of Congress and the Federal Rules of Bankruptcy Procedure and which do not prohibit or limit the use of the Official forms. This authorization is provided pursuant to F.R.B.P. 9029(a).

RULE 9036-1. Notice by Electronic Transmission.

(a) **Electronic Noticing Agreement.** Pursuant to F.R.B.P. 9036, the Court may direct notice by electronic transmission if the entity entitled to receive the bankruptcy notice requests in writing that notices be transmitted electronically. This written request requirement is fulfilled through the execution of an electronic noticing agreement. This is in addition to and distinct from the consent document executed for the CM/ECF electronic service.

(b) **BNC.** The Clerk will provide noticing agreements through the judiciary's Bankruptcy Noticing Center ("BNC") to any person requesting this service. The terms and procedures for electronic noticing are detailed in the Court's noticing agreement provided by the Clerk and also available on the Court's website at www.mtb.uscourts.gov.

RULE 9037-1. Privacy Protection For Filings Made with the Court.

FED.R.BANKR.P. 9037, adopted December 1, 2007, and as amended from time to time, applies in all cases and adversary proceedings, including all exhibits or other documents filed with the Court.

EFFECTIVE DATE

These Local Rules shall be in force and effect in the United States Bankruptcy Court for the District of Montana from and after [REDACTED], 2008, and shall supersede all former Local Rules and General Orders of the Court.

CHIEF BANKRUPTCY JUDGE RALPH B. KIRSCHER

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